

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Banking, Commerce and Insurance Committee March 13, 2023  
Rough Draft

**SLAMA:** Good afternoon and welcome to the Banking, Commerce and Insurance Committee. My name is Julie Slama. I represent the 1st Legislative District in far southeast Nebraska, and I'm Chair of this committee. The committee will take up bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Committee members will come and go during the hearing. We have to introduce bills in other committees and are called away for that reason. It's not an indication that we're not interested in the bill being heard in this committee, it's just part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony will be as follows: introducer, proponents, opponents, neutrals, and then the introduce-- introducer's close should they choose. Testifiers, please sign in, hand your pink sign-in sheet to the committee clerk when you come out to testify, spell your name for the record before you testify. Be concise. It's my request that you limit your testimony to three minutes. At three minutes and 15 seconds, we have a handy alarm that will go off and alert you that your time is up. If you will not be testifying at the microphone, but want to go on record as having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearings. Written materials may be distributed-- thank you-- only while testimony is being offered, hand them to the page for distribution to the committee and staff when you come up to testify. We'll need ten copies. If you don't have ten copies, please wave down a page now so we can help you get there. To my immediate right is committee counsel Joshua Christolear. To my left at the end of the table is committee clerk Natalie Schunk. The committee members with us today will introduce themselves, beginning on my far right.

**DUNGAN:** Senator George Dungan, LD 26, northeast Lincoln.

**BALLARD:** Beau Ballard, District 21, northwest Lincoln and northern Lancaster County.

**KAUTH:** Kathleen Kauth, LD 31, Millard.

**JACOBSON:** Mike Jacobson, District 42, I represent Hooker, Thomas, Logan, McPherson, Lincoln, and three-fourths of Perkins County.

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**SLAMA:** Also assisting the committee today are our rock star committee pages Caitlyn and John. The committee will take up bills today in the following order: LB354, LB355, LB423, LB210, and LB446. With that, we'll open our first hearing of the day on LB354. Senator Raybould.

**RAYBOULD:** Good afternoon, colleagues. Good afternoon, Chairwoman Slama and members of the Banking, Commerce and Insurance Committee. My name is Jane Raybould and that's J-a-n-e, and the last name Raybould, R-a-y-b-o-u-l-d, and I represent Legislative District 28 in Lincoln. And today I am bringing LB354 for your consideration. LB354 helps to clear up a somewhat gray area during the settlement process involving a motor vehicle collision. In many cases, the injured motorist would like to send an offer to settle to the opposing side for the full amount of the available liability policy limits. However, under current Nebraska statutes the motorist must notify their uninsured or underinsured motorist insurance carrier of the offer and receive permission for them to enter into the settlement agreement. Otherwise, their coverage may be waived. Sometimes the uninsured, underinsured carrier, carrier will send a firm response, the coverage will not be waived, but many times there is not a response at all from their carrier. This is where the gray area comes in and it is unclear whether moving forward with an offer to settle will waive coverage. LB354 seeks to clarify this problem by eliminating the requirement for notice and permission to the uninsured/underinsured motorist insurance carrier of the offer to settle. Once a settlement is accepted, then the notice will be sent. I know there will be certainly testimony behind me from those actually working through the intricacies of the insurance claims on a daily basis who will be well suited to answer all your wonderful technical questions. But I thank you for your time and I will try my hardest to answer any of your questions or I might have to defer to the experts behind me.

**SLAMA:** Thank you, Senator Raybould. Are there any questions from the committee? Seeing none, thank you very much.

**RAYBOULD:** Thank you.

**SLAMA:** We'll now open it up for proponent testimony on LB354. If you plan to testify on this bill, please come up towards the front row.

**MARK RICHARDSON:** Good afternoon, Senator Slama,--

**SLAMA:** Good afternoon.

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**MARK RICHARDSON:** --members of the committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I am here today representing the Nebraska Association of Trial Attorneys in support of LB354. I think Senator Raybould did an excellent job of laying out what the issue is here. We don't view this bill as anything more than just a kind of a cleanup on a technicality that has-- just kind of throws a wrench in this process of what we call an "offer to settle." And there's a current Nebraska statute that gives plaintiffs the opportunity to, to send this offer to settle. The issue is it's a totally committable offer. So once we send it on behalf of our clients, the insurance company of the defendant has 30 days in which they can accept it at any point they want. And if they accept it, the deal is done. The case is settled. The problem with it that we're having is there's just some uncertainty out there as to what that means for the UIM claim, which there's another statute that says, well, before you settle a case you have to go back to your UIM carrier and say, hey, we've got the settlement in place, can you grant us permission to settle this case? We do that in every case. This bill doesn't change the fact that ultimately before a settlement is entered into, you still have to get that approval. It just says it's OK for you to go ahead and send that offer to settle. You don't have to worry that that's somehow going to waive your coverage. I can tell you that we've had multiple cases where we have-- we've wanted to send an offer to settle. We have purposely not sent that offer to settle because we couldn't get a response from the insurance-- from the underinsured motorist carrier. They would, they would send us back a letter that basically doesn't give us an answer. There's just-- like, it's hard for me to think of anything that's remotely controversial about this. The only thing this does is remove some strings. It gives clarification. It certainly encourages settlements. I mean, I think-- I've had multiple cases over the years that have settled because we've sent an offer to settle that the other side has been accepted. And so the more times you can encourage people to send these offers to settle, the more cases are going to get settled, the fewer cases you're going to have in Judiciary. And like I said, we just-- we view this very much as kind of a cleanup on a technicality. I am genuinely-- like, I will be on the next bill, I'm genuinely interested to hear any opposition to this because this is pretty simple and straightforward from our perspective. So that's what I've got for you, if you have any questions.

**SLAMA:** Thank you very much. Any questions from the committee? Seeing none, thank you very much for being here.

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**MARK RICHARDSON:** Thank you very much.

**SLAMA:** Additional proponent testimony for LB354. Seeing none, we'll now open it up to opposition testimony on LB354. Good afternoon.

**ROBERT M. BELL:** Good afternoon, Chairwoman Slama and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. The Nebraska Insurance Federation is a state trade organization of insurance companies in Nebraska. I am here today to testify in opposition to LB354. Current law under the Uninsured and Underinsured Motorist Insurance Coverage Act found that Nebraska Revised Statute, Sections 44-6401 to 44-6414 provides the statutory framework and requirements related to both uninsured and underinsured coverage. Section 44-6412 provides an underinsured motorist insurer various rights related to settlements and subrogation. Within these rights include specific notice requirements and deadlines with consequences if the insurer does not meet the deadlines related to the settlement. LB354 seeks to amend this framework by allowing a covered individual to settle without notice to the underinsured or uninsured insurer until such time that the settlement is accepted by the underlying liability insurer. Then the current system of segregation would then kick in, though without the requirements such as written documentation and certified registered mail that currently exist under the current statutory framework. Auto insurance companies are skeptical of the new scheme proposed in LB354. Currently underinsured carriers are able to review a proposed settlement offer-- offer, an offer it has a direct financial interest in and act in a manner that protects its interests and that of its policyholders and premium payers. Underinsured carriers are important parties to these settlements and should be involved in their concern when it appears they are being bypassed, as LB354 would propose to do if the proponents are aware of issues as previously stated. In the current system that are harming policyholders, we are welcome-- we welcome the opportunity to sit down and discuss the issues and work on finding a solution that would work for all parties. The Insurance Federation respectfully opposes the passage of LB354 and I appreciate the opportunity to testify.

**SLAMA:** Thank you very much, Mr. Bell. Any questions from the committee? Senator Dungan.

**DUNGAN:** Thank you, Chair Slama and thank you for being here, Mr. Bell.

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**ROBERT M. BELL:** Sure.

**DUNGAN:** So just to make sure I understand this, in the current framework, the notice has to be sent to the underinsured or uninsured carrier prior to a settlement being offered or prior to a settlement being accepted?

**ROBERT M. BELL:** It's a tentative agreement to settle is what is sent to the underinsured insurer so-- or insurer. Yeah.

**DUNGAN:** OK.

**ROBERT M. BELL:** So.

**DUNGAN:** And this is a lot of-- yeah, a lot of moving parts here. Sorry.

**ROBERT M. BELL:** Yeah, a lot of, a lot of "I" words. Sorry.

**DUNGAN:** Right. What is the, the virtue, I guess, of receiving that notice ahead of time versus when the actual settlement has been accepted? What is the benefit to the insurer at that point?

**ROBERT M. BELL:** To the insurer? Well, that insurer could be a party to that particular settlement, right, so it could-- it-- if it doesn't agree with those terms, it could reject it or it, it could step in and, and subrogate the, the various rights involved. So they, they want to be notified if they should be involved in that party or in that particular--

**DUNGAN:** And so if they--

**ROBERT M. BELL:** --settlement agreement.

**DUNGAN:** Right. Right. So if they were to step in and essentially say, no, this is not an acceptable outcome, that would be the opposite of what the actual uninsured motorist is and the person they're settling with. Right? So you have two people who agree to a settlement it sounds like, and then the insurer can come in and say we don't like that. That's the current structure?

**ROBERT M. BELL:** Yeah, and I'm, I'm not a-- it's not an area that I practice in, but I do have somebody behind me that does--

**DUNGAN:** OK.

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**ROBERT M. BELL:** --and so she may be a little bit better equipped to answer that particular question.

**DUNGAN:** Sure. And it's not an area that I practice in either. I'm just trying to make sure I understand. But it seems to me that it sort of circumvents the purpose of a settlement. If you have two parties who both agree this is fine with us, and then a third party steps in and says, well, I don't like that so, therefore, you two shouldn't actually reach that settlement.

**ROBERT M. BELL:** Well, to that side-- so there's a, there's a, there's a third party, that third party is the insurer that's involved in, in providing additional coverage. And, you know, they have a right to advocate for their interests. Right? And if there's two, two parties that are settling and are not involved in that third party that will involve eventually that third party, shouldn't they be involved in that settlement so we can actually get a settlement? I think-- and, again, Kerrie or Ms. Snowden that follows me can correct me if I'm wrong. I think that's the issue that, that we see now. Again, if there are issues with insurers not timely responding, although there are consequences in the current statute if that doesn't occur, we, we would be welcome to sit down and, and discuss it. In fact, when we read this legislation to begin with, we-- honestly there's a lot of confusion as to what it was, it was actually doing, so.

**DUNGAN:** And I think that's what it seeks to fix some of that gray zone that you've talked about and so do you know of any circumstances where they just don't respond at all or is it that it's not [INAUDIBLE]?

**ROBERT M. BELL:** If they don't, there is a consequence here.

**DUNGAN:** OK.

**ROBERT M. BELL:** So in, in some subdivision (2) of the existing statute.

**DUNGAN:** OK. Thank you.

**ROBERT M. BELL:** Yep.

**SLAMA:** Thank you, Senator Dungan. Additional committee questions? Senator Jacobson.

**JACOBSON:** Thank you, Chair Slama. Mr. Bell, I, I guess kind of what I'm interpreting here, and I would just-- I'm going to ask you this

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question so hopefully the opponent following you will, will include that in her testimony but--

**ROBERT M. BELL:** Sure.

**JACOBSON:** --it seems to me that the issue that we've got here is that we could have the party that's been, that's been damaged working with another attorney who's-- who they reached an agreement. But the person that's actually writing the check isn't part of this agreement and so the person writing a check would like to be a party to this as well as I understand it.

**ROBERT M. BELL:** Right. And I think there's multiple parties writing checks.

**JACOBSON:** Right. And then you mentioned subrogation rights so then that also could have some impact on subrogation rights and so there's a lot of issues here. So I'm anxious to hear the testifier behind you to maybe clear up some of that gray area so that we maybe fully understand that, that, that concept here and that this seems like it might be more than just a cleanup, but.

**ROBERT M. BELL:** We, we review that. We're willing to sit down--

**JACOBSON:** I'm gathering, gathering that's what you're thinking.

**ROBERT M. BELL:** --and discuss it and I didn't hear a question so I'll--

**JACOBSON:** Yeah, but thank you for the answer regardless.

**ROBERT M. BELL:** And I appreciate that. Thank you very much.

**SLAMA:** Thank you, Senator Jacobson. Additional questions or statements from the committee? Seeing none, thank you very much.

**ROBERT M. BELL:** You're welcome.

**SLAMA:** Good afternoon.

**KERRIE SNOWDEN:** Good afternoon. My name is Kerrie Snowden, K-e-r-r-i-e S-n-o-w-d-e-n. I am vice president and assistant general counsel of Farmers Mutual Insurance Company Nebraska. We are the largest domestic automobile insurer in Nebraska and our offices are located just a few blocks from the Capitol. Hopefully, I'll be able to clear up this a

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little bit. Along with what Robert did say, this was-- we had a little bit hard time understanding what the purpose of this was. Now that I know that, hopefully we can discuss that and work through it. But essentially, I believe this bill would frustrate the substitution process that is set out in section (2) of the statute that is already existing. Essentially, the bill appears to allow prejudgment interest for settlement demands, both accepted and pursuant to 45-103.02, in which case then UIM carriers allow the opportunity to substitute pursuant to section (2). However, section (2) applies when there is a tentative settlement, not a final settlement, and this is to allow for the substitution process. So the liability carrier and the uninsured or underinsured claimant can reach a tentative settlement. They-- the reason the underinsured or uninsured carrier needs to be involved is because section (2) specifically sets forth a process where they can pay that amount in advance and, and then continue to litigate the, the claim of the, of the injured party when there is a dispute over what the value is, essentially. So it's not that they are trying to get in the way of a settlement, it's just they need the notice so they need to-- so that the underinsured carrier knows if they're going to have a dispute over the value of the claim for their coverage. The other issue with this language is-- our policy language specifically excludes coverage when a settlement is made without our consent and against somebody that's responsible that impairs our right to recovery. So, again, it's not only a statutory, statutory issue, but it's in our policy language that you would not want to waive your UIM coverage without notifying your carrier and getting them involved. So we have concerns with the notice issues, with the frustration of how it would mess with section (2) and the structure already set out in there. And I would just end with there's already a 30-day requirement built into section (2) and if they don't respond within that time frame then the UIM carrier loses their right to subrogation. So there's already a built-in penalty involved. So for those reasons we oppose LB354 and I would be happy to answer any questions.

**SLAMA:** Thank you, Ms. Snowden. Are there any questions from the committee? Seeing none, thank you very much.

**KERRIE SNOWDEN:** Thank you.

**SLAMA:** Additional opponent testimony for LB354. Good afternoon.

**ANN AMES:** Good afternoon, Senators. I'm Ann Ames, A-n-n A-m-e-s, and I'm the CEO for the Independent Insurance Agents of Nebraska. We are here to respectfully oppose LB354. Ultimately, we have the same

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concerns. We feel like this leaves potential insurers open and our agents open to additional risk. And any time there's additional risk, it potentially increases claims and then potentially increases rates. So we would certainly be welcome to more clarification on it or having conversations, but right now we oppose it and we ask that you do as well.

**SLAMA:** Thank you, Ms. Ames. Are there any questions from the committee? Seeing none,--

**ANN AMES:** Thank you.

**SLAMA:** --thank you very much. Additional opponent testimony for LB354. Seeing none, is anybody here to testify in the neutral position on LB354? Seeing none, Senator Raybould, you're welcome to close on LB354. Before Senator Raybould waives closing, for the record, we have no letters for the record on LB354. Senator Raybould has waived her closing. This brings to a close our hearing on LB354. We'll now move into the next bill up for today which is LB355. Senator Raybould. Good afternoon again.

**RAYBOULD:** Good afternoon, everyone and members of the Banking, Commerce and Insurance Committee. My name is Jane Raybould, and that is J-a-n-e, and the last name is Raybould, R-a-y-b-o-u-l-d, and I represent Legislative District 28 in Lincoln. And today I'm bringing LB355 for your consideration. LB355 would expand upon the work done in 2015 with LB629 which gave the Public Service Commission the authority to regulate Transportation Network Companies, or TNCs, such as Uber and Lyft, in essence, allowing such companies to operate legally in the state of Nebraska. A major portion of that legislation was ensuring the TNCs carried adequate insurance coverage. Currently, Nebraska statutes require TNC companies to carry primary liability coverage of at least \$1 million for death, personal injury, and property damage. It also requires the companies to carry uninsured and underinsured motorist coverage, also referred to as UM and UIM coverage for both the driver and passengers in the amount required by the Nebraska Unicameral and Uninsured Motorist Insurance Coverage Act [SIC] of \$25,000 per person or \$50,000 per occurrence for bodily injury. LB350-- LB355 would increase the amount of uninsured/underinsured motorist coverage required to match the level of primary liability coverage in the amount of \$1 million. UM and UIM coverage comes into play when the driver and passengers of a vehicle are injured in a motor vehicle accident with an at-fault driver who does not have coverage or carries insufficient insurance to cover the

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damages. It only makes sense for the state of Nebraska to require comparable insurance coverage for companies whose business model places drivers and passengers into the flow of traffic on our roadways all day, every day. Again, there are certainly others testifying right behind me who work with the intricacies of motor-- motorist coverage for these type of companies on a daily basis and could certainly be best suited to answer technical questions. But again, I will be willing to take a shot at that. And one thing I want to say about both this bill and the last bill, there is no fiscal amount attached to either of these. It's just, you know, one of those rare things of people coming before you and saying that there's not a big ask, but just to clear up some of these concerns.

**SLAMA:** All right. Thank you, Senator Raybould. Are there any questions from the committee? Senator Kauth.

**KAUTH:** Thank you, Chair Slama. Do you know why it jumps from \$25,000 to \$1 million? That seems like a pretty big leap.

**RAYBOULD:** Well, that \$1 million is really standard for any commercial operator. You know, I can talk about our, our business as well. That is pretty standard. That's a rather low limit. Oftentimes, we're seeing it jump from what we currently have of \$1 million up to \$2 million. But that, that's what a, a, a commercial company such as this stature the primary insurance provide-- insurance coverage should be to, to cover all of these situations where they talked about involving an underinsured motorist.

**KAUTH:** And I'm going to ask you this, but I expect it will be answered by someone else. What does that do to the rates that they're charging their customers?

**RAYBOULD:** The rates that who is charging the cust--

**KAUTH:** That the insurance company is going to charge the customers if they now have to have \$1 million plan.

**RAYBOULD:** Meaning that they would be charging the drivers of Uber and Lyft?

**KAUTH:** Right, whoever their customers are.

**RAYBOULD:** Well, you would certainly assume that the, the main coverage from the company would be able to provide that coverage for-- and all the drivers of Uber and Lyft.

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**KAUTH:** Right. But at some point, someone's going to have to pay more. I'm just wondering where that falls and where that trickles down to, is it the individual drivers who will be paying more for that amount of coverage and make less money. I'm just-- I'm wondering where that falls so it, it could be something else.

**RAYBOULD:** I think that they will probably have to answer that question. But typically it should be the, the company that, that has it for the drivers below.

**KAUTH:** Right.

**SLAMA:** OK. Thank you, Senator Kauth. Additional committee questions? Seeing none, thank you, Senator Raybould.

**RAYBOULD:** OK. Thank you.

**SLAMA:** All right, proponent testimony for LB355. Good afternoon.

**VINCE POWERS:** Good afternoon, Senators. My name is Vince Powers. I'm a lawyer. I practice down the street, 411 South 13th Street. I'm representing Nebraska Association of Trial Attorneys. And more importantly, I'm representing innocent people who come to Nebraska, pay money for a ride, and because they come from a community like Boston or Washington, D.C., or L.A., and they don't own a motor vehicle and someone runs a red light and they incur a couple hundred thousand dollars in medical bills and they don't have very good health insurance, Bryan Memorial has to eat it. So I'm here on behalf of the hospitals and the doctors who save lives and don't get paid. There was an oversight when Uber and Lyft were allowed to come into our state to make money. They now make money. But there are examples, I know personally one young man doesn't own a car because he lives in a community where they have public transportation. Successful businessperson. He's in an automobile, it's not his fault, and he's now facing bankruptcy. So just think to yourself, as you drive home, when you see that car that runs the red light, that reckless driver, they're usually reckless when it comes to how much insurance they have to protect others. And so what happens, innocent people, they take Uber. Uber doesn't tell them, by the way, you could end up bankrupt by sitting in our back seat, even though our driver is doing a good job, because the at-fault driver who runs a red light or isn't paying attention runs into them. They end up at Bryan. And to answer the senator's question, do you know why so expensive? I have no idea. But when I look at healthcare bills, it's very expensive. And so if you

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don't-- even if you have decent insurance, your deductibles and your co-pay can cause a severe strain on your family. If you can't work for six months, what are you going to do? So somehow this \$25,000, I think it was an oversight. But other states around the country, Uber, for reasons-- well, they fight this, Lyft fights this, but in some states it's \$1 million underinsurance. In other states, Colorado just put in \$200,000. But 25,000 just doesn't pay it. And so what happens, the hospitals around the state don't get paid, even though, again, it's the innocent person, they're not doing anything. And unlike the rest of us, and I sure hope if you remember one thing from today, check your underinsurance, because if you don't have \$1 million, you're in trouble if you get hit hard, if you can't work for a year, or a family member is killed. So I would urge this committee to put in sensible limits for a for-profit business. My light is on so I'm done talking. Sir.

**SLAMA:** Oh, no. Thank you, Mr. Powers. I, I just have a couple of questions before I kick it to Senator Jacobson. So you're testifying in your official capacity. You referenced the hospitals and the doctors. What's your actual testifying official capacity today?

**VINCE POWERS:** Nebraska Association of Trial Attorneys.

**SLAMA:** Thank you. I appreciate that. So why in this bill are we treating the Ubers and Lyfts of the world differently from any other motorist on the road when it comes to that underinsurance and uninsured motorist act? Because that statutory limit of \$25,000 is just the same as if somebody was a passenger in somebody's car paying them 20 bucks to give them a ride. Why differentiate between two rideshare companies versus everybody else in a car on the road in Nebraska?

**VINCE POWERS:** Thank you very much for that question. I had meant to address that, because they're for profit. They are here making money. They are not disclosing to their customers that they could go bankrupt by accepting a ride because they are woefully inadequately insured. If I get-- now, it's a little different for the rest of us because we have personal choice. We have freedom of choice. We can call up Farmers Mutual. We can say, Kerrie, give me a name of an agent, and she can sell us a, a policy. But when you get in that car, remember, a lot of people come here because we're a great state, we have great tourism. We ask people to come in, we spend millions of dollars to get people to come in. They get in the back of the vehicle and they only have \$25,000. And if you can't work for six months, you're in trouble.

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And so it's because of the for profit. Those of us who believe strongly in capitalism, as I do, think that there should be cost to make money.

**SLAMA:** OK. And I think Senator Jacobson will touch on this of the costs and where those go. But my question is, I'm paying my friend 20 bucks to give me a ride to the airport. I hop in the back seat. He's operating for profit, not out of the kindness of his heart, or even somebody who gives me a ride wanting to build a relationship or have a conversation with me on the ride to the airport, why, why is that different than two large companies? Like, why are we saying for profit if you're Uber and Lyft, but not if you're literally anybody else in a state? Like, help me understand, and I think you touched on it and I think this is going to be somewhere we just inherently disagree on what the line of and benefit of for profit is in our state.

**VINCE POWERS:** Well, I can't really speak to-- you know, if you decide to pay someone or if you're getting a ride, you're choosing your friend, but you are not regulated by the state of Nebraska. And when the state of Nebraska agreed that Uber and Lyft could come into this state they had to agree to certain protections for the citizens. So the public transport, the PSC, they, they are here to protect the public. They're not here-- the regulatory agency is not here to protect you from your friends, but they are here to protect you from those who get a license, who are able to operate a motor vehicle for profit. Huge difference. They're just night and day in my opinion.

**SLAMA:** I, I appreciate your perspective. Additional committee questions? Senator Jacobson, and I will turn this hearing over to you as well. I have a bill to introduce.

**JACOBSON:** All right.

**VINCE POWERS:** Thank you, Senator.

**JACOBSON:** Thank you, Chair Slama. I'd like to follow up a little bit along the same lines as Senator Slama, but before I ask that question, I've got two questions. The first one would be kind of along the lines that, that Senator Kauth had asked early. I want to understand this. If I'm a driver for Uber or Lyft--

**VINCE POWERS:** Right.

**JACOBSON:** --am I not paying for that auto coverage myself?

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**VINCE POWERS:** I don't know their business model, sir.

**JACOBSON:** Well, my understanding, I'm just assuming that if I decide that I want to drive for them, it's kind of a part-time gig in many cases so I've got a personal vehicle and I'm taking insurance coverages on that personal vehicle that I may or may not be driving full time, part time. I don't know how much I'm driving for them. I, I, I kind of see-- I'm just trying to figure out if we jump that premium up, which we clearly would, you know, that's really the individual who owns the vehicle. And then I kind of go along the lines of Senator Slama that, OK, anybody-- an uninsured motorist could hit me, I mean, I'm not a real safe driver, anybody that has watched me drive they wouldn't climb in a car with me, but, but that doesn't mean that, that, you know--

**VINCE POWERS:** I'm not laughing at you I'm laughing--

**JACOBSON:** So I'm just saying if that exists out there and I'm just trying to figure out where the consistency is at. And most importantly, I guess, I'm just trying to figure out, it seems to me and maybe someone else can answer this question behind you, but who is actually paying that additional premium for the higher coverage? Because as I understand it, it's a personal vehicle, not a vehicle owned by Uber or Lyft and, and they're just driving for them and collecting a fee and sharing that with Uber and Lyft for the connection.

**VINCE POWERS:** Well, their business model is their business model. But right now, Bryan Memorial doesn't get paid.

**JACOBSON:** Oh, I understand that and, and--

**VINCE POWERS:** But that, that-- no--

**JACOBSON:** --and that's not my question.

**VINCE POWERS:** --but, but that is--

**JACOBSON:** --my question still comes back to--

**VINCE POWERS:** --important, you're asking who is paying, where we all pay when there's inadequate insurance when you have an innocent person.

**JACOBSON:** I agree with that.

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**VINCE POWERS:** OK. Why should that innocent person have to go bankrupt because some driver or Uber, they can arrange, they're-- in other states, there's \$1 million coverage. They're able to do it in other states, whether-- I assume they're still in business. It's just that in Nebraska, we're at \$25,000. And again, I guess we, we can find out-- someone can find out what the difference in, in premium costs are. But we're talking about people who don't know that when they get into the back of that vehicle and that car can be stopped and somebody can rear-end them and paralyze them, they're going to get \$25,000.

**JACOBSON:** And, and I get that.

**VINCE POWERS:** OK.

**JACOBSON:** I guess I'm still back to the same question of all the cars that are driving in Lincoln at anyone, at anyone point in time, I got to think a small fraction of them are Uber or Lyft drivers.

**VINCE POWERS:** Right.

**JACOBSON:** And so we're, we're saying if you own your vehicle and you, and you happen to drive for Uber or Lyft on a part-time basis, we're going to make you get higher coverage. Then the majority of the cars that are driving around the state, it just seems to me that this is an issue that we need to take up more in terms of what's the right minimum to protect the hospitals as opposed to zeroing in on just one industry.

**VINCE POWERS:** Senator, half of you, you're spot on on the latter point. The \$25,000 state minimum is woefully inadequate, but that's not why I'm here. But we're here because there's a significant difference of all those vehicles out there, the Uber and Lyft drivers are doing it for profit, which, which makes a significant difference. And there's-- again, Uber and Lyft, the other difference is Uber and Lyft, they are there for the folks who don't own motor vehicles. So I don't want to keep going.

**JACOBSON:** Yeah. Well, thank you. No, I appreciate that. Any other committee questions? Senator Dungan.

**DUNGAN:** Thank you, Senator Jacobson, and trying to maybe help answer your question in the form of a question if that's OK?

**JACOBSON:** Questions are required.

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**KAUTH:** It's Jeopardy.

**DUNGAN:** So I--

**VINCE POWERS:** I agree.

**DUNGAN:** Thank you for being here, Mr. Powers. Have you had a chance to review, for example, Uber's website where they talk about what their insurance policy is and what their sort of business structure is for that?

**VINCE POWERS:** I've looked at some of the Uber things. I was looking more at the different coverage in different states.

**DUNGAN:** OK. So are you familiar with the fact that the website says that if you are offline or not driving it's your personal coverage that applies. But if you're available and waiting for a ride or on route to pick up riders Uber does maintain a policy for you. Correct?

**VINCE POWERS:** I was not aware of that, but that--

**DUNGAN:** So if, if Uber maintains a policy for you in those circumstances-- to answer this question, the cost is not going to go on the individual driver, it's--

**VINCE POWERS:** Right.

**DUNGAN:** --going to go on the company. Correct?

**VINCE POWERS:** Thank you. Yeah, that solves that problem. Thank you.

**DUNGAN:** Just wondering.

**VINCE POWERS:** I have some cases back at the office that you can look at.

**JACOBSON:** All right. Other questions? Anything else, Senator Dungan?

**DUNGAN:** No, I don't.

**JACOBSON:** All right. Senator Kauth.

**VINCE POWERS:** And I am a 4.90 rating. I checked that on Uber, my driver, so.

**KAUTH:** No.

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**JACOBSON:** You're good? Other questions?

**VINCE POWERS:** Oh.

**BOSTAR:** Senator Bostar.

**VINCE POWERS:** Yes.

**BOSTAR:** Thank you, Senator, and thank you, Mr. Powers for being here. Could you just for our transcribers, could you spell your name, please?

**VINCE POWERS:** Oh, sure, it's P-o-w-e-r-s. The powers that be.

**BOSTAR:** Thank you very much.

**VINCE POWERS:** Thank you.

**JACOBSON:** Any other questions for Mr. Powers? If not, thank you for your testimony.

**VINCE POWERS:** Thank you very much.

**JACOBSON:** Are there any other-- I guess-- are we proponents, right? All right. Seeing none, are there any opponents?

**BRAD NAIL:** Good afternoon, Mr. Chairman, members of the committee. My name is Brad Nail, B-r-a-d N-a-i-l. I'm with Converge Public Strategies, and I'm here on behalf of Lyft. I previously worked for Uber on the passage of the TNC laws in the country, including the bill that was enacted here in Nebraska in 2015. That TNC bill and the current law in Nebraska reflect the terms that were carefully negotiated by the TNCs, by the insurance industry, by other stakeholders like the banking lobby and the trial bars in some states. With respect to the insurance industry, NCOIL, the, the National Council [SIC] of Insurance Legislators, developed a model framework for TNC requirements. This framework was agreed to and included input from major national insurance trades from NAMIC, from APCIA, as well as insurers like Farmers, USAA, Allstate, among others. All that is to say that there were a lot of stakeholders in both the public and private sectors that contributed to and approved the model language that's reflected in current Nebraska law and around the country. This model is viewed nationally as a success. Bills were passed on this-- based on this model in most states and there's widespread agreement, if not near unanimity, that the model insurance language works. It

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protects drivers. It protects the public. It guarantees that the interests of insurers, riders, and TNCs are properly addressed. The bill before you deviates from that model by increasing the requirement on TNCs alone to provide much higher UM coverage in addition to the substantial liability limits that we're already required to carry. The bill would have Nebraska emulate the requirements of only a handful of states like California, New York, and New Jersey. This coverage is expensive, it's inefficient, and would cost millions of dollars a year to carry excessive amounts of insurance at a limit that is seldom, if ever, reached. So we believe that this new requirement is unnecessary. TNCs are already required to maintain insurance well in excess of minimum requirements for personal autos. That coverage, including the \$1 million primary liability coverage during the engaged stage, pays for injuries sustained to any party-- any third party, including riders in the TNC vehicle were caused by the negligence of the TNC driver. Additionally, we're already required to provide UM at the state mandated limits. So as you can see, there is a lot of insurance coverage available on each TNC ride. Imposing an additional requirement on TNC like Lyft, as proposed in the bill, could also result in increased costs to the customer. On the Lyft network, approximately 46 percent of rides started in low-income areas and Nebraska residents have used Lyft for critical access to transportation, including healthcare appointments, job interviews, grocery stores, and much more. So increased costs would be especially difficult in the current economic environment and could reduce earning opportunities for drivers. So we believe that the insurance requirements already imposed provide ample protection and for those reasons we oppose the bill as drafted and I thank you for the opportunity to speak.

**JACOBSON:** Thank you. Committee questions? Senator Kauth.

**KAUTH:** Thank you, Vice Chair Jacobson. So the previous testifier was talking about someone else rear-ending, wouldn't that be that person's fault and their insurance so the Lyft or Uber driver would be not at fault in that kind of an incident?

**BRAD NAIL:** Correct. Yes.

**KAUTH:** OK. Thank you.

**JACOBSON:** Other committee questions? Senator Dungan.

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**DUNGAN:** Thank you, Senator Jacobson. Thank you for being here. So the handful of states that have implemented these higher UI requirements, genuinely, I don't know the answer to this, have you seen an increase in costs passed on to the rider specifically because of that?

**BRAD NAIL:** Yes. The insurance costs generally are a substantial portion of the costs to both-- well, to Lyft specifically, and so any increase in those requirements result in increased premiums that increases the cost structure generally for how the rides are, are billed.

**DUNGAN:** Do you know ballpark sort of what that increase has been? Are we talking cents or dollars?

**BRAD NAIL:** Well, I don't have numbers for-- I don't have a projection for what it would be for Nebraska. I know when we debated this in another state last year the public information was that it would be about a 6 percent increase in the total cost of rides.

**DUNGAN:** OK. Thank you.

**JACOBSON:** Other committee questions? All right, if not, thank you for your testimony. Other opponents?

**FREDDI GOLDSTEIN:** Good afternoon, members of the Banking, Commerce and Insurance Committee. My name is Freddi Goldstein, F-r-e-d-d-i G-o-l-d-s-t-e-i-n, and I am testifying today on behalf of Uber. Uber has been connecting riders and drivers in Nebraska since 2015. Every week, thousands of people in Nebraska use the Uber app to earn income on their own schedule. And tens of thousands of Nebraskans rely on Uber to get to doctors appointments, visit loved ones, and get home safely after a night out. LB355, which would, which would require Transportation Network Companies operating in this state to increase uninsured and underinsured motorist coverage, would unnecessarily put this resource at risk by making it incredibly costly to operate here. I think a brief explanation of how TNC ridesharing works may be helpful. When a TNC driver makes themselves available for a ride request, their time behind the wheel is broken into three periods. Period one refers to the period of time when a TNC driver has opened the TNCs digital network, but has not yet accepted a ride request. Periods two and three refer to those periods of time when a TNC driver is operating on a TNC's digital network and has accepted a prearranged ride request or is already in route with a rider in the, in the vehicle until the trip is completed. Taking into consideration the

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three TNC periods I just laid out, the current statutory insurance coverage requirements are as follows: In period one, current statute requires TNCs carry \$50,000 of bodily injury liability per person, \$100,000 of bodily injury liability per accident, and \$25,000 for property damage liability per accident. And the insurance we're here talking about today, UM/UIM at \$25,000 per person and \$50,000 for accident as you've heard. Uber pays for this insurance on behalf of all drivers operating on the Uber app. During periods two and three, one-- we do \$1 million combined single limit for liability and \$25,000/\$50,000 UM/UIM. This bill would require only TNCs to increase the UM/UIM coverage. And what we have found is that there is no evidence that that increase is necessary. In reviewing our claims over the last two years, we found that 99.99 percent of trips in Nebraska did not result in any UM claim, let alone a claim severe enough to warrant the limits proposed in this bill. In fact, during these 24 months, there were only two total UM claims in Nebraska that are valued at \$25,000 or greater. Respectfully, Uber submits we should not be legislating in response to merely two claims, especially when such legislation would put Nebraska out of step with the rest of the country where other states are in the process of lowering these limits. Thank you very much for your time.

**JACOBSON:** Thank you for your testimony. Committee questions? Just one quick one. I missed-- so you're telling me on, on stage one, it's, it's \$50,000 per person, and two and three, what were the, what were the limits there?

**FREDDI GOLDSTEIN:** \$1 million for liability and \$25,000 per person and \$50,000 per accident on UM/UIM.

**JACOBSON:** Perfect. Perfect. All right. And then obviously through all this, and I know this is not part of the bill today, but as I recall all this also was negotiated in terms of the property damage and also it, it allowed for those that have cars that have liens on them that the bank can get paid if there's a damage to the vehicle and that kind of thing that goes with it, so. All right, well, thank you. If there are no other questions, thank you for your testimony and I would ask for other opponents.

**FREDDI GOLDSTEIN:** Thank you.

**JACOBSON:** Other opponents? If not, anyone like to speak in the neutral capacity? Notice I didn't ask the question Uber or Lyft. I just left that alone, so. All right. Seeing none other, I will mention that

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there was one, there was one opponent-- proponent letter and one neutral letter. And with that, we'll close-- or I'll ask if you want to close. Would you like to close?

**RAYBOULD:** Thank you. Yes, I would. For full disclosure, I use Lyft and I use Uber and I love them. They're great, and many Nebraskans rely on that. But I think what we're talking about is what the Public Service Commission did negotiate back then. And the coverage is inadequate for what we're seeing today. We know that most companies have coverage. But when it comes to uninsured or underinsured motorists, where does that land? And I know that Senator Dungan pointed out that when they're in the act-- the TNC is in the act of providing that service there is coverage, but it didn't say much about the uninsured/underinsured motorist. And I think that's the gap that we're trying to, to resolve to make sure that there is coverage in place, adequate coverage in place going forward. And so for that reason, I, I ask for your support on, on this measure that we need to increase it. And when-- Senator Kauth, you asked about who bears the cost, it should be the company. If you're driving a vehicle for profit for commercial purposes, the company that you're working with for either Uber or Lyft should be able to have that coverage, adequate coverage for underinsured and uninsured motorists. And that's what I think the whole impetus of trying to push forward is this that the Public Service Commission gave the authority to regulate both of these TNC companies. But there needs to be additional coverage when it comes to insurance to make sure if you're the victim of someone who rear-ends you, rear-ends you in an Uber vehicle and they don't have any insurance, it's inadequate at this point in time.

**JACOBSON:** Questions for Senator Raybould? All right. Seeing none, thank you--

**RAYBOULD:** OK.

**JACOBSON:** --for your testimony.

**RAYBOULD:** Thank you very much.

**JACOBSON:** And as I mentioned, there was one proponent letter and one neutral letter. And with that, we'll close the hearing on LB355 and we'll open, open the hearing on LB423. Senator DeBoer.

**DeBOER:** Thank you, Senator Jacobson. In year five, I finally make it before the Banking and Insurance Committee.

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**JACOBSON:** What a treat.

**DeBOER:** Very excited to be here today. Might just savor the moment. So good afternoon, Senator Jacobson and members of the Banking, Commerce and Insurance Committee. I am Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r. I represent Legislative District 10 in northwest Omaha. Today, bringing LB423 for your consideration. Currently in state law, there is a prohibition on stacking or combining uninsured or underinsured motorist coverage for two or more vehicles insured under the same policy to an injured person for any one accident. Further, if the insur-- insured person is entitled to uninsured/underinsured coverage under more than one policy of liability insurance, the maximum amount an insured may recover shall not exceed the highest limit of one policy. LB423 would clarify that the Nebraska prohibition on stacking of insurance policies does not extend to umbrella or excess liability policies. So I have behind me testifiers who work in the insurance claim realm on a daily basis who can give you a more technical discussion as to how LB423 helps Nebraskans. So thank you for your time and I will attempt and probably fail to answer any of your questions.

**JACOBSON:** Thank you, Senator DeBoer. Questions for Senator DeBoer?

**DeBOER:** I guess I don't have the opportunity to fail.

**JACOBSON:** Will, will-- are you-- will you-- you sticking around for the close?

**DeBOER:** I can't, we're in the middle of Exec.

**JACOBSON:** So if we wanted to ask questions, now would be the time to do it?

**DeBOER:** Now would be the time.

**JACOBSON:** All right. Well, I think you're good. I'm-- I, I make it a policy not to ask hard questions to testifiers who are presenting bills.

**DeBOER:** Well, thank you very much, I guess.

**JACOBSON:** Yeah.

**DeBOER:** And, yeah, I'm sorry, I do have to go back to Exec.

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**JACOBSON:** You've got some important business over there. Thank you.

**DeBOER:** Thank you.

**JACOBSON:** OK. I would then ask for any proponents, proponents for LB425 [SIC--LB423].

**MARK RICHARDSON:** Good afternoon again, committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I am here again testifying on behalf of the Nebraska Association of Trial Attorneys in support of LB423. I'm happy to discuss the more technical aspects of this, but much like the last time I was up here, we do view this as more of a clarification of sorts, and sometimes I feel like I'm up here trying to forecast what the objections might be. I missed it on the last one. I didn't think the objection to that last bill was going to be that we were somehow trying to waive notice requirements. We specifically put it in that bill all the notice requirements are still required, you still have to go through the same process. It just allows for easier access. Same thing on, on LB423, I-- it's hard for me to sit here and say why I think they're going to-- why I think opposed-- why insurance is going to oppose this. When we go and we buy umbrella insurance coverage, it is sold to you as this is insurance coverage on top of what you already have. So anybody that's driving a car, if you have your auto policy, maybe your auto policy has \$250,000 of coverage on it, you're concerned that, that might not be enough coverage for me. I want to go out and get extra coverage. So I'm going to go get an umbrella coverage for \$1 million. So you got UIM, underinsured motorist, at 250 on your underlying policy, you've got umbrella policy for \$1 million that you-- that was sold to you as sitting on top of that to 250, yet the answer to the liti-- to the lawsuit that I just handed out to you, one that was filed in the case of ours two years ago, three years ago now, says exactly that. It was an Iowa insurance company selling products here in Nebraska, selling an umbrella policy here in Nebraska. Paragraph 12 of that answer says: We acknowledged the umbrella policy was in place, all premiums paid. You have this coverage. Paragraph 14 of that same, same answer says: yes, but we get a credit for your \$250,000 of underlying coverage. So while we sold you \$1 million policy and we were collecting premiums for coverage of \$1 million, their argument to the court was under no circumstances would they ever have to pay \$1 million because they get a credit for the underlying policy. We get stacking. We understand the principles behind it. We're not here today attacking the antistacking stuff. What we're saying is umbrella policies are different. That should have been an easy point of clarification for the insurance company but they

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fought it. They-- we, we were forced to file a motion for summary judgment on that issue. Our client who was paying out of pocket for that case, was charged over \$10,000 in attorney fees just to make sure that they had the coverage that they thought they bought. That shouldn't be how things work. This is a very simple fix to that saying umbrella coverage, excess coverages are different. Those do as they-- as they're almost definitionally created, those stack on top of your underlying coverage. It's that simple.

**JACOBSON:** Thank you. Questions from the committee? Go ahead, Senator Kauth.

**KAUTH:** Thank you, Vice Chair Jacobson. So if, If an insurance company is selling it and they know that the state of Nebraska says you can't stack, would they be at fault for selling something that is not possible?

**MARK RICHARDSON:** No, because I don't think anybody when they put the antistacking stuff in place. I mean, if you look at the statutes, the antistacking statutes don't talk about umbrella coverage. They talk about coverage generally. I don't think anybody ever thought that an insurance company would sell-- because the stacking provisions do say you can sell coverage that's more favorable. So if you want your coverage to stack, you can write a policy and you can give it to your insured that says this one will stack and you, you can always do it more favorably than what the statute says. So that's what umbrella is, it's a, it's a policy that's intended to, to stack. And yet in this one case, and presumably in future cases, if we don't fix the law we're going to have these insurance companies that are going to continue to come in and say, well, we know we sold you an umbrella or an excess coverage but we're not going to allow that one to stack because we've got this convenient antistacking provision in Nebraska.

**KAUTH:** OK. Thank you.

**MARK RICHARDSON:** You're welcome.

**JACOBSON:** Senator Dungan.

**DUNGAN:** Thank you, Senator Jacobson. And thank you. This is kind of in the, in, in the weeds here. I know it's kind of niche. What was the result of this case when they made this argument? You said there was summary judgment.

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**MARK RICHARDSON:** Right. We filed summary judgment and we prevailed on it. And so we were, we were ultimately happy with the outcome but that was a Nebraska State District Court decision from a judge, it's not binding on any other judge in, in Nebraska. And so the next time an insurance company wants to do the same exact thing that, that this one did, they can file their answer. They can force another motion for summary judgment. And then it's up to the judge's discretion to interpret. I mean, I think the judge in that case took two months to render an opinion on that, during which time nobody had any idea what the covered situation was. This, again, it clarifies and this gives the decision to the judge, judge in every case when there's umbrella involved. This, this is how this will work and this will prevent unnecessary litigation from moving forward.

**DUNGAN:** And that makes sense. And the reason I ask that is I think a lot of times we hear, you know, this is cleanup language or this is a clarification bill, when in reality it's a little bit more complicated than that. But it's fair to say that in this case, the district court agreed with your interpretation. And so what we're doing here is adding in language to codify the court's ruling, saying that is the rule moving forward. But this is not some new law, this is what the courts interpreted the current law to be. Is that fair to say?

**MARK RICHARDSON:** 100 percent.

**DUNGAN:** OK. Thank you.

**JACOBSON:** Other questions from the committee? If not, I've got one question for you.

**MARK RICHARDSON:** Yes, sir.

**JACOBSON:** I want to just make sure I understand the lay of the land here. I go out and I buy coverage, basic coverage, \$250,000 of coverage, and I buy an umbrella policy. And it might be in my case, I've taken a multimillion dollar umbrella policy. My understanding is, is that that protects me from someone suing me and I'm the, the defendant and I'm going to be covered. As I understand, and correct me if I'm wrong here, if a third party comes in and comes after me and the judge-- and they shut him off at \$250,000, it's not my concern what they get paid, it's that I don't want to be the one paying it and that's what my liability umbrella does for me. So as I understand it, if the judge ruled that there should be more paid, I'm good until it maxes out on my umbrella policy, correct?

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**MARK RICHARDSON:** Senator Jacobson, you're correct except for nothing in this bill touches liability. This is all on the underinsured motorist side of things.

**JACOBSON:** OK.

**MARK RICHARDSON:** So this would only be in the situation where you're in a car and some other negligent party hits you and say they didn't have any coverage. So you have your policy that has the underlying 250 plus the umbrella on top and you're not going after your own policy of underinsured motorist on the, on the underlying auto policy plus what you paid for for your umbrella so it doesn't touch liability. This is only underinsured motorists.

**JACOBSON:** I guess, I guess I've always been under the impression on the umbrella that the umbrella is for liability only so maybe I'm mis-- misunderstanding that.

**MARK RICHARDSON:** There are-- I mean, umbrella policies come in all shapes and sizes. There are certain companies that will-- that have a blanket policy that say none of our umbrella policies carry UIM coverage. There are other policies that-- there are other companies that will write it if you want it and there's other companies where it comes standard where it's UIM. But the whole point of this is if you're going to have it, if you're going to, if you're going to charge a premium for the, the \$1 million or the \$500,000 or whatever it is for the umbrella and you're going to write it as an umbrella you should treat it as an umbrella.

**JACOBSON:** So, again, just to be clear then, what you're telling me is I'm in an accident and it's not my fault, there's an under or uninsured motorist who hit me and caused bodily damage-- injury to me and the cost is over \$250,000 and I've got a \$250,000 UIM policy. You're telling me that none of my umbrella policy could kick in to cover my personal damages--

**MARK RICHARDSON:** I, I wouldn't--

**JACOBSON:** --because of the uninsured motorist?

**MARK RICHARDSON:** --I wouldn't say none of your umbrella would kick in. What I'm saying is, if that same situation manifests itself and let's say you have \$1.5 million of lost income that's fairly well documented, \$1.5 million, you have your 250 of underlying, you're clearly going to recover and then you have another million on top of

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it, which the way it was sold to you, you would in that \$1.5 million clear damage case you would unquestionably collect \$1.25 million. What, what, what this aims to correct is the company that comes in and says in that situation where you clearly have \$1.5 million in damages, that insurance company comes in and says, well, right, I know I sold you \$1 million umbrella, but I actually get a discount of the 250 that you got from your underlying policy, therefore, you only collect 750 from the umbrella, you collect the 250 so you get \$1 million total as opposed to the 1.25 you thought you had.

**JACOBSON:** So at the end of the day, you need to take into consideration the underlying coverage when you're looking at the maximum amount of the umbrella.

**MARK RICHARDSON:** Right.

**JACOBSON:** Gotcha. Other questions? We'll welcome Senator von Gillern back to the committee.

**von GILLERN:** Thank you.

**JACOBSON:** Any questions for the testifier?

**von GILLERN:** No thank you.

**JACOBSON:** All right.

**von GILLERN:** Getting up to speed.

**JACOBSON:** Just wanted to give you the chance. All right. Thank you for your testimony.

**MARK RICHARDSON:** Thank you, Senators.

**JACOBSON:** Other-- let's see, proponents? No, I bet we've got a couple of opponents out there so let's go to opponents. Welcome, Mr. Bell.

**ROBERT M. BELL:** Thank you, Vice Chairman Jacobson and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l. I'm executive director and registered lobbyist for the Nebraska Insurance Federation. The Nebraska Insurance Federation is a state trade organization of insurance companies in Nebraska. I'm here today to testify in opposition to LB423. As you've heard, LB423 would prevent the stacking of umbrella policy to uninsured and underinsured coverage. Nebraska's insurers oppose this

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legislation because solutions already exist in the market-- the marketplace. But first, what is umbrella coverage? Umbrella coverage is liability coverage to protect the insured against personal liability. And for some of that, when the underlying coverage is not enough. Typically, this coverage is related to the insured's own liability to others and does not provide coverage for injury or property damage to the insured itself. Many umbrella policies contain specific exclusions from stacking on top of under-- uninsured and underinsured coverage. To protect oneself from the financial cost of injury, an individual would purchase other types of insurance such as health insurance, disability insurance, income protection insurance, long-term care coverage, etcetera. These are life and health products that are readily available to Nebraskans who can afford such coverage. Additionally, the market has also addressed the issue of stacking umbrella coverage with under-- uninsured and underinsured coverage. Numerous property and casualty companies have endorsements that permit this type of stacking of policies if Nebraska is willing to purchase the coverage. The choice-- having the choice in the market allows Nebraskans to pick and choose the coverage that they believe best covers their own risk at a price they can afford. For these reasons, the Nebraska Insurance Federation respectfully opposes the passage of LB423 and I appreciate the opportunity to testify. And just the way we read this, this statute, I guess doesn't line up with what I heard before from the proponents, certainly willing to sit down and, and discuss that. You know, you don't have to actually guess what our opposition might be, you can, you can talk to us and we can have that conversation, so.

**SLAMA:** Thank you, Mr. Bell. Are there any questions from the committee? Senator Dungan.

**DUNGAN:** Thank you, Chair Slama, and thank you, Mr. Bell. So just to make sure that we're on the same page, because I--

**ROBERT M. BELL:** I don't know that we are.

**DUNGAN:** Yeah, that's what I'm trying to figure out. So is it your position currently that you are allowed to stack specifically umbrella policies for uninsured and underinsured with the underlying claim?

**ROBERT M. BELL:** Depends on the policy.

**DUNGAN:** OK.

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**ROBERT M. BELL:** So the policy--

**DUNGAN:** But it's strictly prohibited.

**ROBERT M. BELL:** I mean, there, there's a-- yeah, no, absolutely not strictly prohibited. There are endorsements out there. I went and looked them up right on myself that are available and very common insurance companies that you can talk to your independent service agent and find if you are concerned about having that ability to do so.

**DUNGAN:** So it sounds like there's some common ground to be reached here. We just need to make sure we know what we're talking about.

**ROBERT M. BELL:** Yeah. Yeah. And, and, yeah, I, I, I, you know, we might be talking over each other a little bit, you know, are we talking about how much do you get from your umbrella policy if it does allow for stacking? I, I think that's a different conversation that's-- and that's addressed in LB423. So that's, that's my reading of it, you know, my insurer's reading of that from what they told me, my member companies.

**DUNGAN:** But there's nothing that you think specifically prohibits that stacking so long as the policy permits it.

**ROBERT M. BELL:** Right. And this as drafted would, I believe, require stacking. And so many, many companies exclude that in their umbrella policy. So they specifically they don't want to underwrite that particular risk. They don't want to charge their customers that additional premium. They want to push them into other products for whatever reason. And, you know, the market is what the market is. And so as you are shopping for insurance, you may have, if you're interested in that type of coverage, it is available in the Nebraska marketplace right now. So you could not pay for it. You know, I may want to have \$1 million of underinsured coverage and not have my umbrella policy provide that coverage because I want to pay, you know, less in my premium, right, so.

**DUNGAN:** So if the language of LB423 was specifically permissive rather than potentially mandatory, you wouldn't oppose it then?

**ROBERT M. BELL:** Yeah, I mean, I don't think it would change the state of what we're doing right now. I mean, it is-- I mean, you can do this if the policy allows for it, the provisions of the policy--

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**DUNGAN:** OK.

**ROBERT M. BELL:** --would, would determine as it is.

**DUNGAN:** That, that does clarify that. I appreciate it.

**ROBERT M. BELL:** Yeah.

**DUNGAN:** Thank you.

**ROBERT M. BELL:** You're welcome.

**SLAMA:** Thank you, Senator Dungan. Additional questions from the committee? Seeing none, thank you, Mr. Bell.

**ROBERT M. BELL:** You're welcome.

**SLAMA:** All right. Additional opponent testimony for LB423?

**KERRIE SNOWDEN:** Good afternoon once again.

**SLAMA:** Welcome back.

**KERRIE SNOWDEN:** My name is Kerrie Snowden, K-e-r-r-i-e S-n-o-w-d-e-n, vice president and assistant general counsel of Farmers Mutual Insurance Company of Nebraska. Again, the largest domestic automobile insurer in Nebraska. I am here today in opposition of LB423 and the main reason is the overly broad use of the term umbrella insurance policy and excess insurance policy. This will no doubt lead to unintended consequences as a result. Farmers mutual itself, we do offer a personal liability umbrella policy. Again, as Senator Jacobson was understanding, our specifically does exclude any first-party coverages for bodily injury or UM/UIM coverage. Again, the liability policy we provide is for damages our insureds caused to others. Not to say that as, as we've already discussed and other testifiers, that if that is a product you do want in your umbrella you can certainly go to the marketplace and find it. As an aside, Farmers Mutual does offer \$1 million in UM/UIM coverage. And the reason we would prefer to have that under the automobile policy is that it's easier for us to rate and charge the appropriate premium for. If we were forced, pursuant to this bill, to convert our umbrella of liability policy to a personal UM/UIM policy, it would be much harder for us to rate those policies and have an appropriate premium put on them, and that would impact everyone as a whole. You know, that's the great place about the marketplace, you can go out and get the appropriate coverage that is

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right for you and your financial status. But this would require us to increase the premium overall for a coverage that some people probably don't even want. So, again, it would frustrate the, the purpose of our personal liability umbrella policy. Lastly, I would just add with my time that's left, the excess insurance policy language I think would frustrate the situations where you have UIM and two separate policies. If I am riding in a vehicle as a passenger, I get the UIM coverage from the vehicle I am writing in, but then can stack my personal UIM coverage on top of that and that is usually referred to as excess coverage. So again, these broad use of the terms in the bill I think is problematic. Again, you know, these-- this is something we're willing to discuss and talk through, but I am opposing it as written for those reasons.

**SLAMA:** OK. Thank you, Ms. Snowden. Are there any questions from the committee? Seeing none, thank you very much.

**KERRIE SNOWDEN:** Thank you.

**SLAMA:** All right. Additional opponent testimony for LB423? Good afternoon.

**KORBY GILBERTSON:** Good afternoon, Chairwoman Slama, members of the committee. My name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf of the American Property Casualty Insurance Association in opposition to LB423. I'm just going to echo part of what was said before because I know you all love that so much, but I think the real problem is the language in this bill goes much further than clarifying anything that has happened because it, it simply says that any umbrella policy can be used. When Senator Jacobson was making his comments, I quick opened my app and looked at my umbrella policy and it clearly says it's a liability policy which is not intended for this use. As the mother of a 18-year-old boy driver, I can tell you I don't want to have to have my umbrella policy rated because of his driving habits so-- and that, unfortunately, is what would happen with everyone in the state, so. With that, I'd be happy to answer any questions.

**SLAMA:** Thank you, Ms. Gilbertson. Are there any questions from the committee? Seeing none, thank you very much.

**KORBY GILBERTSON:** Thank you.

**ANN AMES:** Good afternoon.

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**SLAMA:** Good afternoon.

**ANN AMES:** I'm Ann Ames, A-n-n A-m-e-s, and I'm the CEO for the Independent Insurance Agents of Nebraska. We are also here to oppose LB423. We have similar concerns to the previous testifiers. It's my understanding from our agents that UM/UIM can-- are included in umbrella limits if a client purchases an umbrella that offers that, it might decrease the carrier availability and it-- it's-- potentially could cost more, but it's available if you want to do that. Making people do that, having that endorsement doubles the cost of the umbrella. It will have a drastic impact on premiums. That's our largest concern that it's going to increase premiums. It's-- you know, we're happy to talk more about it and see if we can get some more clarification. But right now, as written, we oppose the bill.

**SLAMA:** Thank you, Ms. Ames. Are there any questions from the committee? Seeing none,--

**ANN AMES:** Thank you.

**SLAMA:** --thank you very much. All right, any additional opponent testimony for LB423? Anyone here to testify in the neutral position on LB423? Seeing none, Senator DeBoer, you're welcome to close. Oh, she waives closing. Before we close out the hearing, there was one opponent letter for the record received. This will bring to a close our hearing on LB423. We will now move to Senator Bostar's LB210.

**BOSTAR:** Good afternoon,--

**SLAMA:** Good afternoon.

**BOSTAR:** --fellow members of the Banking, Commerce and Insurance Committee. For the record, my name is Eliot Bostar, E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. Really, before I get into it, I just want to quickly remark on the fact that I believe all three of the previous bills were described by their respective introducers as cleanup bills. And I, I would just say that, OK, maybe they weren't, but this one is and let's all just go into it with that expectation. I'm here today to present LB210, which adopts the Prior Authorization Reform Act. Prior authorization is any requirement of an insurer that prevents a medical provider from providing care to a patient without first obtaining the insurer's permission for said care. There are two primary reasons why prior authorization reform is needed. First, prior authorization requirements can delay or deny

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medically necessary patient care. And second, prior authorization requirements place costly and often unnecessary burdens on our healthcare providers. It doesn't take a great deal of imagination to understand the negative impact that these requirements have on patient care. For example, if a patient visits their doctor's office and a doctor determines that the patient requires a CT scan to confirm a particular diagnosis, prior authorization requirements mean that the patient often can't get the CT scan the same day. More likely, the patient will wait upwards of three days or more before their insurance carrier approves the scan. In a 2021 physician survey conducted by the American Medical Association, 93 percent of physicians reported patients would experience delays in care because of prior authorization requirements, 82 percent of physicians reported patients that abandoned their treatment because of prior authorization requirements, 24 percent of physicians reported patients that were hospitalized because of prior authorization requirements, and 18 percent of physicians reported patients that suffered a life-threatening event because of prior authorization requirements. Prior authorization requirements also place a tremendous financial burden on our healthcare providers. Bryan Health Systems here in Lincoln employs over 45 individuals at an annual cost of over \$3 million solely to deal with prior authorization requirements. In the same AMA survey I referenced before, physicians reported completing an average of 41 prior authorizations a week and spending more than six hours of time each week doing so. Forty percent of physicians reported having staff who work exclusively on prior authorizations. In 2018, several provider groups, including the American Medical Association and the American Hospital Association, entered into a consensus statement with several health plans, including Blue Cross Blue Shield, where everyone agreed on the need for prior authorization reform and agreed on a set of principles for said reform. Several states: Texas, Georgia, Illinois, and Michigan have all passed legislation of prior authorization reform as result of the consensus agreement. LB210 would require each health carrier to adopt a program that modifies prior authorization requirements in a way that reduces overall volume, but still ensures that safe, affordable and efficient healthcare is being provided. The program is to be developed by each health carrier in consultation with its medical providers, and the program is to be built around the principles that were expressed in the consensus statement that I previously described. Each program must offer healthcare providers that have a historically high prior authorization rate over a period of time, an exemption from prior authorization requirements. A 90 percent approval rating over a six-month period is

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the benchmark set in this legislation. Medical providers who meet this benchmark on prior authorizations are to be exempted. The theory is that a medical provider who is consistently ordering services or prescribing medications that are appropriate and efficient with the consistent approval of insurance carriers doesn't need to be micromanaged through the prior authorization process. LB210 also creates a data collection and reporting requirement for the Department of Insurance related to prior authorizations. Each year, carriers would be required to report data on their total authorization requests, denials, and reasons for denials. The purpose of this request-- of this requirement is to give us, as policymakers, the information we need to evaluate whether these reforms are working. With that, I thank you all for your time and attention and I'd be happy to answer any questions you may have. I will note that there are individuals behind me who deal with this on a daily basis.

**SLAMA:** Thank you, Senator Bostar. Are there any questions from the committee? Senator Kauth.

**KAUTH:** Thank you, Chair Slama. The 90 percent prior authorization, is that per type of prior authorization or is that an overall? So is it for--

**BOSTAR:** It's, it's for--

**KAUTH:** --kidney stones or, like, specific issues?

**BOSTAR:** --for a provider.

**KAUTH:** So they're, they're overall prior authorizations that they have 90 percent--

**BOSTAR:** Yes.

**KAUTH:** --each time and so it's not per a health issue?

**BOSTAR:** That is certainly my understanding.

**KAUTH:** OK. Thank you.

**SLAMA:** Thank you, Senator Kauth. Additional committee questions? Senator Jacobson.

**JACOBSON:** I just have one quick question. Thank you, Chair Slama. I, I guess if I understand this, what you're really trying to do is

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something similar. In the banking industry you would have, let's say, SBA insurance. So if you're going to get an SBA guarantee, you-- we have to package the loans and at the SBA, they review it, send it back to us, tell us whether it's approved. But if we get a preferred provider in, in that case, if we're a preferred lender, it means we know the program well enough that we can make the decisions to, you know, to, to lock the guarantee and we can turn them around quickly and get them on their way and that's generally because you do a lot of them. And then as I think you're proposing, that would also mean then if we have some that we put guarantees on that we shouldn't have, then we're probably going to get kicked out of the program. And so you just need to know what the rules are, understand what the protocols are, because I get it from the insurance industry standpoint, I'm, I'm getting the sense they're going to testify against this bill, just, just a long shot. But I know, I know I'm out there, but the, the question then would be doing procedures, costly procedures that, that they maybe would say don't fit the protocol. So is that really the essence of the bill that you're concerned with?

**BOSTAR:** Yeah, I mean, I think the SBA program your describing is, is a, a fair analogy. And, and truly this being in the position where your prior authorizations are exempted would require you to, to maintain a significant standard of consistent excellence in the eyes of the insurance providers. Right? I mean, it's saying that in order to be a part of this, you would have to have 90 percent of all of your submissions for prior authorizations approved. And so I, I think-- and by setting a bar that's at that level, we are significantly mitigating any risks that are out there, just as a financial institution would by being a preferred provider, a preferred provider for the SBA. You know, it's, it's clear that they would be looked on favorably because they are in the business of mitigating risks and, and understanding exactly what's going on within all these systems.

**JACOBSON:** I'm, I'm just going to tell you, I'm going to withhold my, my confirmation that this is clean up until after I've heard the insurance industry, but, but great presentation.

**SLAMA:** Thank--

**BOSTAR:** Consent bill.

**JACOBSON:** Consent.

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**SLAMA:** Wow, them are fighting words. Thank you, Senator Jacobson. Additional committee questions? Seeing none, thank you, Senator Bostar.

**BOSTAR:** Thank you.

**SLAMA:** We'll now open it up for proponent testimony on LB210. And if you are planning to testify on this bill, please feel free to come up to the front few rows. We'd love to get you up here as efficiently as possible. Good afternoon.

**RUSS GRONEWOLD:** Good afternoon, Senator-- Chair Slama and members of the Banking, Commerce and Insurance Committee. My name is Russ Gronewold, R-u-s-s- G-r-o-n-e-w-o-l-d. I'm the president and CEO of Bryan Health and we're an Nebraska-owned and governed medical-well system with six medical centers. I come in support of LB210 on behalf of the Nebraska Hospital Association, Bryan, and the patients for whom it's our, our mission to serve. You have my testimony. I'll just summarize the four points that I have in, in support of this today and some of them have already been mentioned by Senator Bostar. First, is that the prior authorization process, process represents an administrative burden on providers that does not equal-- does not have an equitable result. And so from the standpoint of the types of claims we're after, 2022 study by the OIG said that only 5 percent of claims or, or I should say proposals that are submitted are actually denied on first blush. And so even then many are appealed and after that they are approved at rates of 15 to 60 percent. So we're talking about a really small amount of claims here, but we put a lot of resources to go after those. It was mentioned before that we have 45 individuals dedicated to that. That does not include dozens of individuals that are also going after our inpatient and post-acute claims. So even though we have a very high pre-authorization rate and we put a lot of resources to it, none of this actually guarantees that we're going to be paid at the end. That's still a whole nother process and this does not guarantee, that it only guarantees we will not be denied for going through this process. So what LB210 does, it transforms the prior authorization process that today is over 90 percent inefficient to one that is much more efficient and targets the problem areas. Second, the prior authorization process often reduces access to care. Today, there are no uniform standards for which to judge those cases. Everyone has their own standards. There are no mandated turnaround times to receive an answer and so, therefore, delays are common, as was stated earlier, with potential impact especially for critically ill beneficiaries who may suffer negative health consequences from delayed or denied care.

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Let me just give you a quick example of what happens every day. I'd like you think of a surgeon who has gone into a 7 a.m. surgery and they've been told at 8:00 they've been scheduled for a peer-to-peer review with an insurance company. And now that surgeon has to decide, are they going to scrub back out of that case in order to take that phone call that's been given at that particular time or do they go ahead and take that, and take that phone call so they get the care for their current patient or, excuse me, the proposed patient, or do they stay in or risk delay for that care? And that happens every single day that they have to make the decision whether to scrub out of a case to take a phone call or not. So this-- under this scenario is potentially remedied. Third, insurance companies already have Gold Card programs in place. We really appreciate places like Blue Cross who have already, already piloted this in a narrow perspective. So with that, I don't believe costs will be going up for the reasons that I state there and I'm willing to take questions at this point.

**SLAMA:** Thank you, Mr. Gronewold. Any questions from the committee? Seeing none, thank you very much for being here. All right. Additional proponent testimony? Good afternoon.

**JOE THIBODEAU:** Good afternoon. Thank you. Thank you, Chairman Slama. My name is Joe Thibodeau, T-h-i-b-o-d-e-a-u. I'm a cardiologist with CHI Health and an assistant professor of medicine at Creighton University and I testify on behalf of the Nebraska Chapter of the American College of Cardiology and of CHI Health in support of LB210. As we've already talked about, prior authorizations where a provider notifies as an insurance carrier of a care plan and awaits approval prior to providing a service or filling a prescription, this process always inserts the insurance carrier between the patient and the provider. And by the nature of the process, this always delays care. Patients sometimes have to wait up to 15 days or go through a lengthy appeal process for these things. And this occurs even though some treatment plans used every day must go through a prior authorization despite near uniform approval. For example as a cardiologist, daily I see patients with symptoms of racing heart, and uniformly these patients need to wear a cardiac monitor anywhere from one day to 30 days. And we know they're uncomfortable so we always choose the monitor that's the shortest possible duration to get the data we need. And so despite clear clinical indication and strategy behind this, PA is still often required. And fortunately, when I order this, the approval rate approaches 100 percent. Unfortunately, the patients who were in my office left, need to come back, leave work early, have the monitor placed so it certainly costs them a little money out of

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pocket. So the PA process is inefficient, wastes time for myself and my staff, and increases this out-of-pocket cost. Another example I'd like to share. Last month, I saw an individual who had a severely abnormal stress test. I saw the patient and the next step for this kind of patient is very obvious, they-- it's agreed upon by cardiologists and guidelines the nation over, they need a heart catheterization. So this patient was very anxious so I set him up for a heart catheterization the next morning. He came in early, we find out that the catheterization was not authorized so our next step was I have to pull a provider out of their clinic. They have to get on a call with the insurance company, wait on hold to do a peer-to-peer prior authorization. So the good news for my patient is that it was approved, but the patient who was supposed to have a case at 8 a.m. had his case at 2 p.m. instead, waited in the hospital all day. As I said, he was quite anxious, greatly increased his distress. And so these are the kind of things that we deal with every day. Just a few examples of kind of the waste within the PA process. And in short, we think, you know, the PA process produces delays in care, introduces inefficiency, requires uncompensated time and effort for our side and for the insurance companies. And in that, in short, you know, I'm in, in support of LB210 on behalf of Nebraska Chapter of Cardiology and Creighton Univer-- and CHI Health.

**SLAMA:** Thank you, Dr. Thibodeau. It was great to see you.

**JOE THIBODEAU:** You too.

**SLAMA:** Questions from the committee? Senator Kauth.

**KAUTH:** Thank you, Chair Slama. What happens if a prior authorization doesn't occur and a procedure is done? Does that go on the patient, does that go on you, or is it just a big mishmash?

**JOE THIBODEAU:** It can be either one of those things. So sometimes if something is important enough, we have to decide that we're going to go ahead and do it anyway. And we never know if the patient could get stuck with the bill. Most often what happens is the health system or the hospital gets stuck holding the bag even though we've decided that we need to do this. Other times we just have to wait.

**KAUTH:** Does it ever resolve so that you do the procedure and then eventually they'll say, oh, yes, we should have done the authorization?

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**JOE THIBODEAU:** Sure, that can happen. That does happen but you just don't know. If you, you know, if you start a case without authorization, you just don't know.

**KAUTH:** OK. Thank you.

**SLAMA:** Thank you, Senator Kauth. Additional questions from the committee? Seeing none, thank you very much.

**JOE THIBODEAU:** Thank you.

**SLAMA:** Additional proponent testimony for LB210? Good afternoon.

**CHERYL SLOMINSKI:** Good afternoon, members of the Banking, Commerce and Insurance Committee. My name is Cheryl Slominski, C-h-e-r-y-l S-l-o-m-i-n-s-k-i. I'm here today to testify in support of LB210 on behalf of the Nebraska Rheumatology Society and Memorial Community Hospital and Health System, where I'm a nurse manager in the specialty clinic. When nurses are taken away from their job requirements to sit on hold to call back patients all due to prior authorizations, this leads to a loss of coordination of care for other patients and other nurses. Everyone in the system loses. I've been a nurse for 27 years and two years at this position. Dr. Kathryn Wildy, rheumatologist, started coming to the specialty clinic in August of 2022. As Dr. Wildy's patient volume has increased so have our prior authorizations. This is not abnormal and part of the cost of having a rheumatologist. However, the time spent on paperwork, the phone, and specifically on hold has become burdensome. A recent example: a woman with rheumatoid arthritis in her early sixties has been on Xeljanz for nine years. Every year the insurance company requires a new prior authorization despite the physician documenting that the rheumatoid arthritis has been under excellent control on Xeljanz. The prior authorization took four hours over approximately six weeks. The majority of time I was waiting on hold. In the end, we had to provide patient samples of the medication due to our next prescription being delayed by the prior authorization process. Since mid-December to mid-January, I have spent approximately 60 to 70 hours on prior authorizations. In each case, the authorization creates a delay in these patients receiving their medications and as such caused a break in their treatment. It took multiple phone calls to fix these issues. Prior authorizations may have started as an effort to control healthcare costs, however, it has now become an overused, costly, and inefficient system responsible for delays and patient care. Wasting physician and nurse time does not reduce healthcare cost and simply shifts cost to our private practice

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and hospitals as all the hours spent completing the prior authorization process are not compensated or reimbursed by the insurers. In fact, a recent 2021 study published in Health Affairs states that physicians devote approximately \$26.7 billion annually in navigating these systems for drug approvals. Our patients also bear the cost in the form of declining health and missed work. I urge the committee to vote in favor of LB210 and vote to help Nebraskans gain timely access to care while helping our already overburdened healthcare system to be more efficient and less costly. Thank you for your time.

**SLAMA:** Thank you, Ms. Slominski. Are there any questions from the committee? Seeing none, thank you very much for being here.

**CHERYL SLOMINSKI:** Thank you.

**SLAMA:** Good afternoon.

**KATHRYN WILDY:** Good afternoon, members of the Banking, Commerce and Insurance Committee. My name is Dr. Kathryn Wildy, K-a-t-h-r-y-n W-i-l-d-y. I'm here to testify in support of LB210 on behalf of the Nebraska Rheumatology Society and also Memorial Community Hospital and Health System in Blair, Nebraska, where I work. I am proud to be a Nebraska native and an internal medicine physician and rheumatologist now for 22 years. My patients and the nurses and I have been negatively affected by the ever-increasing burden of prior authorizations. First, the numbers have drastically increased. When I started in practice, we had two to three prior authorizations a year. Now we have at least two a week. Second, the insurance companies are changing the requirements for prior authorizations seemingly randomly. Recently, we have experienced them demanding that the patient actually participate in the process and that the approval of the medication be for such a short amount of time we couldn't tell whether the medication was even effective. I would like to provide an example. The patient, a woman in her thirties, had rheumatoid arthritis for five years. In November of 2022, due to a new medical issue, we needed to switch her rheumatoid arthritis medication. The request to the insurance was for a medication FDA approved for rheumatoid arthritis in the same class as her previous medication, but would address her new medical issue. The initial approval process took three weeks, ending in late December. However, the medication was approved for only one month, not the normal 6 to 12 months. This was shocking as the medication takes three months to even become effective. At the end of January, the insurance company did request another approval. The

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patient's condition had not changed. There was no new information. The nurse doing the prior authorization, who you've now met, Cheryl Slominski, spent hours on the phone, primarily on hold. Finally, the insurance company said the patient herself had to call to receive the final decision. This was also shocking. So the patient took out time from her work two days in a row, sat on the phone on hold, each time hanging up without getting a decision. And then the next business day, they approved the medication despite her never speaking to the insurance company. The result of the process for the patient she was stressed about the process, stressed about possible flares of her RA given the lengthy process and she missed two hours of work, then she had to drive to our office to receive samples, otherwise her medication regimen would have had a break. For the system, we had two prior authorizations in two months using up six hours of nursing time. So who did this help? This type of delay in care, delay in providing medication saves the health system company money, but the savings is now offset by the need to pay for nursing staff to make phone calls and wait on hold. And really, instead of using nursing staff for what they're trained for, which is to take care of patients. So when I initially wrote this, I hadn't read the 90 percent, but I wrote in here 90 percent of the time, which is true, I get approval of rheumatic medications or radiologic studies despite the authorization process. We as physicians work extraordinarily hard to make sure this happens. Our healthcare system is already stressed. Nurses are stressed and in short supply. So, I ask, if physicians are prescribing medications within FDA approved guidelines, why are we going through the prior authorizations the way they are written? Why we delaying care for our patients? Why are we increasing the cost of providing healthcare? Let's work together instead to help provide timely and efficient care for Nebraskans. I'm happy to take any questions.

**SLAMA:** Thank you very much, Dr. Wildy. Are there any questions from the committee? Seeing none, thank you very much.

**KATHRYN WILDY:** OK, thank you.

**SLAMA:** All right. Additional proponents? Good afternoon.

**DANIEL ROSENQUIST:** Good afternoon, Chairwoman Slama and members of the committee. My name is Dr. Daniel Rosenquist, D-a-n-i-e-l R-o-s-e-n-q-u-i-s-t. I am a family physician in Columbus and the current president of Nebraska Medical Association. The NMA represents physicians across the state in a range of specialties and our members will tell you prior authorization reform is greatly needed. These

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practices are extremely burdensome on physicians and the healthcare system in general. Worse, these practices have a negative impact on patient health due to the unnecessary delays and inability to follow best practices as you already heard. A very high, very-- while a very high percentage of prior authorizations are ultimately granted, the process is increasingly frustrating, drawn out, and opaque as payers change prior authorization requirements without notice. You've already heard the studies from the, from the American Medical Association and I will not repeat those but it is quite burdensome. The NMA understands that payers have a role to play in keeping healthcare costs down, but far too often these practices are interfering with what is right for the patient. We're not talking about just high-cost medi-- treatments here. Many of my prior authorization personally-- my-- struggles in my practice are over relatively inexpensive generic drugs that these patients need. And for also for imaging studies, I may have a patient who comes into the office and after a full evaluation I feel that they need a CT scan but it's going to be denied. And I cannot get this done and if I feel that it's an emergency and must be done, my only recourse is to send this person to the emergency room where they frequently repeat much of the evaluation and much of the studies and still end up getting the CT scan that we could have done at a much lower cost and much more efficiently [INAUDIBLE] increased costs and fragmentation and the burden. My-- I-- for my own personal experience, I could go on all day, you don't want to hear this, expounding on many frustrations of my staff and myself. With each new calendar year, we have multiple deniers-- denials in which we must reauthorize medications for patients who have been stable, frequently for several years and maybe have transferred into our office and we no longer have the records but we must go through this. A patient of mine a year ago who had been very stable on an antidepressant for six to eight years, I had to go through three medications to get this reauthorized on this patient, all of which he had tried before but we couldn't document and he suffered and his family suffered in that time. Imagine if your, your, your child has ADD and all of a sudden at the calendar year, we have to go through your medications again. That child is suffering, the parent is suffering, the school suffering, and so on. These are just needless and, and opaque. I say opaque, we can't understand the rules. The NMA is committed to working and continuing to work on this issue. We appreciate Senator Bostar for bringing LB210, and we hope this committee will agree with something that needs to be done to address this. Thank you for your time and I'm happy to answer your questions.

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**SLAMA:** Thank you very much, Dr. Rosenquist. Appreciate it. Any questions from the committee? Senator Jacobson.

**JACOBSON:** Thank you, Chair Slama. Thank you, Mr. Rosenquist, for being here. The-- I guess I have a couple of questions because I'm, I'm guessing that there'll be some opponent testifiers representing the insurance industry so I thought I might get the jump on some of your responses to what I'm probably going to hear. So first of all my understanding is like, for example, Blue Cross Blue Shield has what I think is a Gold Card program. Can you tell me how that works and is that-- how does that work [INAUDIBLE]?

**DANIEL ROSENQUIST:** So there's a lot of data on our practices. We're very-- everybody knows how, how many CT scans I order, other imaging studies, and how often they're being authorized by everything. So if I have a certain authorization rate, 90 percent, 95 percent also and I get Gold Card legislation and so I no longer have to go through the Gold Card or I know I have to go through the prior authorization, it just automatically happens.

**JACOBSON:** OK. And so how does that-- how do you see that fitting into what ought to be the standard?

**DANIEL ROSENQUIST:** I think that really helps and personally we, we already persistently in our practicing in cost sharing and risk sharing so we actually-- I do a very-- prior authorize my patients every day as to whether I really need to have studies done and medications done and that part of things because I'm already assuming some of that risk. But what it does, it helps-- it just streamline that process. I can get that CT scan done at 3:00 instead of 6:00 or 7:00 after they've gone to the emergency room and then we've got to find consultants to help to manage those people after hours or on weekends instead of normal business hours.

**JACOBSON:** I guess to follow up, obviously, we'd like to see some kind of agreement. I, I, I wish it was as simple as this just going to consent calendar, but I get the sense that we won't be there. Just, just, just a wild guess here, Chair. So where do you think you're at in the process here of negotiating with insurance companies to come up with something that's going to be more workable?

**DANIEL ROSENQUIST:** I think Gold Card legislation or approval, I think, you know, just looking at processes and part of it is we just don't understand the rules and the rules change and we don't know what--

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what worked last year may not work this year. And so, again, first of the year, we're looking back at what we did in 2022 and all of a sudden it's no longer the same rules, but it's kind of like, OK, by about September you'll finally figure out the rules and then they're going to change. You know, if we can-- if we had an open, honest discussion I think that would really help.

**JACOBSON:** A follow up also would be, how is that working, then, as it relates to Medicare and Medicaid, do you go through the same process?

**DANIEL ROSENQUIST:** Yes.

**JACOBSON:** And how is that working?

**DANIEL ROSENQUIST:** Frustrating. I mean, sometimes, sometimes-- and part of it is you-- sometimes when you're-- you get something approved, it's like what did I say? What do I do this time that I got this approved and, and the last time it didn't get approved?

**JACOBSON:** So but we would not have any control over what happens with Medicare, right?

**DANIEL ROSENQUIST:** Correct.

**JACOBSON:** And so, so Medicare is still going to be out there on their own. Medicaid would be-- can the state control that?

**DANIEL ROSENQUIST:** Correct.

**JACOBSON:** OK. So we're really talking about-- and, and, and now we're talking about insurance companies here. And, you know, in fairness, and, and again, I, I'm, I'm torn because, you know, I sit on a hospital board, I understand the numbers. I see how that works and it's very frustrating. I also recognize where Blue Cross is, in particular, in Nebraska where they're kind of hit and, and for the most part there's other carriers out there but they're kind of the gold standard. And we're looking at hospitals trying to make it work on less than 100 percent of your costs to be covered through, through Medicare, Medicaid and so, therefore, Blue Cross is picking up the difference and they're trying to push back. And meanwhile, the hospitals are certainly getting squeezed. All the providers are getting squeezed. The clients' customers are getting squeezed--or the patients and, hence, we are having trouble really providing great healthcare. And therein lies the challenge and, and so there's-- it looks like there's a lot of pieces to this.

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**DANIEL ROSENQUIST:** I would agree. I think one of the other things is the inconsistency from one payer to another and what works with-- what may work with one payer may not work with another payer. And I think that's at least the frustration. And I would tell you that probably somebody who has 45 people on staff they probably have their little notebooks and they, they pass back and forth and say if this payer use this strategy.

**JACOBSON:** Yeah. Gotcha. Thank you for your testimony.

**SLAMA:** Thank you, Senator Jacobson. Additional questions from the committee? Seeing none, thank you, Dr. Rosenquist.

**DANIEL ROSENQUIST:** Thank you.

**SLAMA:** Additional proponents for LB210? Seeing none, we'll now open it up to opposition testimony for LB210. Good afternoon again.

**ROBERT M. BELL:** Good afternoon, Chairwoman Slama and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. The Nebraska Insurance Federation is a state trade association of insurance companies in Nebraska and includes many of the major health insurance carriers operating in our state. I am here today to testify in opposition to LB210. I know not a great surprise to Senator Jacobson and the rest of the committee. But I would like to express my sincere appreciation to Senator Bostar and some of the proponents for reaching out to discuss the issue of prior authorization and gold carding, specifically, before the hearing so thank you for that. It is my understanding that LB210 is intended to be the beginning of a discussion related to reform around the issue of prior authorization and the implementation of a gold carding program in Nebraska. Prior authorization is a process by which a healthcare provider checks with the health service's payer before providing a service or pharmaceutical. Health insurers have developed prior authorization and applied it to specific areas of healthcare services to promote safety and to promote timely and affordable access to care for consumers. In a perfect world, prior authorization would not be needed. However, as I hope the committee is learning, the world is not perfect. Prior authorization help-- prior authorizations help encourage patient safety by providing the payer the opportunity to approve or redirect procedures that could be needlessly dangerous or costly. This leads to increased patient safety and also saves resources. Admittedly, a

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healthcare provider will be frustrated when a prior authorization is delayed or denied. No one likes to be second guessed. Certainly not doctors. However, Nebraska law already provides various levels of appeals both within the insurance company and externally through the Department of Insurance. Independent review organizations, when an adverse determination occurs, do review these events. Expedient reviews are available when necessary. No doubt prior authorization adds to administrative burdens for the health provider and also for the health payer. However, the safety and reduction of costs are worth the burden. In our opinion though, the burden of prior authorization causes both healthcare providers and payers to seek out new, innovative ways to address prior authorization. One of these ways is through gold carding or enabling certain providers who meet certain established metrics and who are willing to retain risk to bypass the normal prior authorization process. I believe that the success of these programs has led to the bill in front of you today. But not all health providers or payers have the necessary foundation to establish these programs. A more measured approach of discussion and collaboration and study is first needed before enacting a statutory process for all. The Nebraska Insurance Federation respectfully opposes the passage of LB210, but looks forward to further construction-- constructive discussion of these issues over the interim. Thank you for the opportunity to testify.

**SLAMA:** Thank you, Mr. Bell. Are there any questions from the committee? Seeing none, thank you very much.

**ROBERT M. BELL:** You're welcome.

**SLAMA:** Good afternoon.

**JEREMIAH BLAKE:** Good afternoon, Chairwoman Slama and members of the Banking, Commerce and Insurance Committee. My name is Jeremiah Blake, spelled J-e-r-e-m-i-a-h B-l-a-k-e. I'm a Government Affairs associate and registered lobbyist for Blue Cross and Blue Shield of Nebraska. I appreciate the opportunity to provide you with an update on the gold carding program that we offer at Blue Cross. Since 2016, we have offered a gold carding program for physicians and mid-level providers for the purpose of reducing the administrative responsibilities around the prior authorization process. Under this program, providers with low denial rates on prior authorization requests can be exempted from medical review requirements in exchange for provider records for auditing. As Mr. Bell stated, we welcome the opportunity to work with our partners in the provider community to build on the success of the

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existing gold carding program to meet our shared goal of delivering medically necessary care that is based-- to improve patient outcomes. But respectfully, gold carding should be based on evidence-based clinical guidelines that focus on patient outcomes, not political give and take. Speaking, speaking more generally about prior authorization process, Blue Cross has made significant investments in technology to ease the prior authorization providers-- prior authorization process for both providers and for us. We offer a web-based, web-based system that gives providers access to important information, such as patient eligibility, plan coverage details, claims and payment status, and other important functions. This system also allows providers to electronically submit and manage prior authorization requests. In some cases, a prior author-- prior authorization request can be improved-- approved instantly by this web-based system. However, a number of Nebraska providers do not use this web-based electronic prior authorization process. Instead, about 25 percent of the prior authorization requests we receive are faxed from providers. As you can imagine, it takes longer to process a prior authorization request that is faxed compared to one that is submitted electronically. And at a time when we in the healthcare industry are exploring the potential of new technology like artificial intelligence, we are still sorting through documents that are sent by facsimile in the year 2023. We recognize the opportunity to improve the prior author-- authorization process for providers and insurers. That's why we created the gold carding program and have invested in technology to streamline the process. But programs like gold carding need to be implemented with great care to prevent unintended consequences. We oppose state mandates that seek to interfere in our ability to ensure Nebraska families receive the right care at the right time in the right setting. For this reason, we oppose LB210 and I would be happy to answer any questions you have.

**SLAMA:** Thank you very much, Mr. Blake. Any questions from the committee? Senator von Gillern.

**von GILLERN:** Thank you, Mr. Blake.

**JEREMIAH BLAKE:** Yes.

**von GILLERN:** Any-- what's your best guess as to why 25 percent of the requests are faxed in in 2023?

**JEREMIAH BLAKE:** That's a good question. I don't know the answer to that. But again, if you look at the volume of prior authorization

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requests we get, a heavy number of them are faxed to us for some reason.

**VON GILLERN:** And I presume that there's been some effort on your part to convey that that's not the most efficient means to request--

**JEREMIAH BLAKE:** We certainly--

**VON GILLERN:** --prior authorization?

**JEREMIAH BLAKE:** --we would certainly love for them to move to the electronic process for, again, it streams-- streamlines it for both the provider and for us.

**VON GILLERN:** And has Blue Cross actively tried to convey that to the providers and encourage them to move in that direction--

**JEREMIAH BLAKE:** Sure, yeah.

**VON GILLERN:** --and provided the tools?

**JEREMIAH BLAKE:** Yes, we reach out--

**VON GILLERN:** OK.

**JEREMIAH BLAKE:** --to providers--

**VON GILLERN:** All right.

**JEREMIAH BLAKE:** --and communicate with them that this is available to them.

**VON GILLERN:** Thank you.

**JEREMIAH BLAKE:** Yes.

**SLAMA:** Thank you, Senator von Gillern. Additional committee questions? Seeing none, thank you very much, Mr. Blake.

**JEREMIAH BLAKE:** Thank you.

**SLAMA:** All right. Additional opponents of LB210?

**JAMES WATSON:** Hello. Good afternoon,--

**SLAMA:** Good afternoon.

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**JAMES WATSON:** --Senator Slama and members of the committee. My name is James Watson. That's J-a-m-e-s W-a-t-s-o-n, and I am the executive director of the Nebraska Association of Medicaid Health Plans. And so I'm confining my remarks to the Medicaid space. We're opposed to LB210. In, in contrast to the employer and individual health plans, Medicaid plans have a whole additional level of support or oversight through their contracts with the state of Nebraska. A new contract will come out January 1, 2024, as a result of procurement that just is concluding at this point, and the health plans are going to cover health benefits, dental benefits, pharmacy benefits, and behavioral health benefits. They're going to have a 360-degree view of what is happening with our members. The prior authorizations are a valuable tool for health plans to help guide care. This helps promote care delivery that is less costly, avoiding duplicative services and promoting evidence-based practices, but equally effective. For example, we find medical treatments that have had-- that have lower cost but are equally effective, medications that may be unsafe when combined with other medications, medical treatments and medications that should only be used for certain health conditions. These prior authorization processes are updated at least annually, and the list is reviewed by medical advisory committees, which, which have network physicians on them. So in January of 2022, while preparing for the new RFP for the Managed Care Organizations, Director Bagley and his staff conducted a listening tour of Nebraska. As a result, the contract provisions of the new MCO contract regarding prior authorizations were strengthened and I have a summary of the important oversight provisions. I went through and the almost 200-page contract and identified places where the Medicaid Long-Term Care folks are strengthening it and covering the prior authorization process and I'm just going to leave it. I have 15 copies here and it's not exciting, but it does give a good explanation as to how we are regulated and how, how much we're regulated. So the Nebraska Association of Medicaid Health Plans believes MLTC will be able to oversee prior authorization requirements effectively while allowing the flexibility to address future developments. Sealing the process in statute is far too inflexible when MLTC is managing a sizable benefits program. That's the end of my testimony and I'm happy to answer any questions.

**SLAMA:** Thank you very much, Mr. Watson. Are there any questions from the committee? Senator Jacobson.

**JACOBSON:** Thank you, Chairman Slama. Mr. Watson, I, I guess, in particular, when I look at Medicaid and, again, I'm looking at payer percentages in most hospitals today and unfortunately Medicare and

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Medicaid are the biggest payers, highest percentage, and, of course, are paying well below cost for the hospitals to operate which is problematic in itself. But I guess the big concern that I'm continuing to hear and see is the time and delay on, on these pre-authorizations. And that's really getting my attention more than anything. And I will tell you, I'm also concerned about some Medicare Advantage Plans, which is a different animal in terms of how that happens at a hospital who takes in a patient and then waits three or four days for a pre-auth and don't get paid for three or four days and why those aren't retroactive. Can you speak to that?

**JAMES WATSON:** On the retroactivity, no. I mean, I, I don't know anything about the volume that you're looking at. I don't know whether there are companies that might be willing to approach that. I mean, it's something that can certainly be discussed. But I, I think on the timeliness issue that you were talking about, I think the state has addressed that in this new contract that's coming out. I mean, you can't put together a prior authorization list without their approval. And so, I mean, all of this is going to have heavier oversight beginning on January 1, 2024, than it did before. And if retroactivity is something that needs to be discussed, I think MLTC needs to certainly be involved in that.

**JACOBSON:** Well, I, I guess I've just always been confounded over the idea that the authorization is given but it's given three or four days after the patient is admitted, why on earth that would not be retroactive for the day that they came in is just beyond me and it almost seems like it's just a way to skirt being able to pay fully. And, and hospitals are already under tremendous pressure the way it is financially, not to mention how they discharge patients and not getting paid for patients that are ready to be discharged because they can't be discharged into a safe environment. So the numbers are not working out there and so I would certainly encourage Medicaid, in particular, to take a long look at, at, at that piece of it because it is a large percentage of the payers, particularly in rural Nebraska. And those facilities are relying upon that both on a timely basis and trying to get better covered on those costs, so.

**JAMES WATSON:** Understood.

**JACOBSON:** Thank you.

**SLAMA:** Thank you, Senator Jacobson. Additional questions from the committee? Seeing none,--

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**JAMES WATSON:** Thank you.

**SLAMA:** --thank you, Mr. Watson. Additional opponent testimony for LB210? Seeing none, would anybody like to testify in the neutral position on LB210? Seeing none, Senator Bostar, you're welcome to close. And as you come up, for the record there are five proponent letters and two opponent letters for LB210.

**BOSTAR:** Thank you, Chair Slama, members of the committee. Kind of just want to talk about a little bit of the, we'll call it feedback on the legislation. First of all, I mean, you know, and I always appreciate Mr. Bell's testimony, in particular, and as we-- as the committee may remember, I don't remember who all was here for the hearing but as, as we explored last week, I think it was a fairly strong position from Mr. Bell that, you know, there's, there's definitely a place for increasing regulations to serve the greater good. But I, I also want to point out maybe the alternative, too, which is that sometimes adding flexibility, putting more freedom, loosening restrictions, sometimes that's what's necessary for the greater good, and that's what we're talking about here. So it was brought up that in a perfect world we wouldn't need pre-authorizations at all. But of course, we don't live in a perfect world as was stated and as is true. And so we do need pre-authorizations, of course, because there are providers who need that. That's absolutely right. Which is why the legislation before you wouldn't abolish pre- authorizations, it would exempt providers who have maintained and would have to continue to maintain a 90 percent acceptance rate from the very insurance companies that would be concerned about this. So we don't need a perfect world. We have the world we have where we can apply flexibility to our systems to reward those who are doing a good job and providing the assistance and support necessary for those-- I won't say who are doing a bad job, but who maybe need that. Maybe there's value added there, and perhaps that in and of itself offers as an incentive to continue to increase the rate at which their pre-authorization requests are accepted. Because, right now, what is the incentive? For your provider, you have to put in for every single thing, right? So whether they're 100 percent accepted or 2 percent accepted, why not just ask for everything all the time? So let's align our incentives with what we know to be best for the practice, the practice of insurance and medicine together. Because as we're always trying to balance, I believe everyone here at least wants a system where we have access to affordable healthcare for people. And when insurers come up and oppose things, it's usually under the, the pretext that doing something will ultimately make insurance more expensive. Right? If there's, if

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there's more work or more requirements, more things that have to be done or allowed, that ultimately it will make insurance more expensive, which, of course, is a cost borne upon all of the payers of insurance, which then increases rates, which then can cost out a certain segment of the population from having access to insurance. And, of course, that's what we want to avoid. But here we have a situation where we have tremendous costs within our healthcare system because we are embracing inefficiency. So what I would ask the committee to do is let's lower the cost of insurance by lowering the cost of healthcare, by eliminating these wasteful expenses when they are demonstrably not needed. Because frankly, we are just talking about providers who have a 90 percent-plus acceptance rate for all three authorizations. With that-- oh, faxing. The easiest way to eliminate faxing is to eliminate the need for them to send in pre-authorization requests altogether. It is interesting, I'll just-- I'll briefly touch on the Medicare piece. You know, Senator Jacobson, as you mentioned, Medicaid effectively reimburses at a loss, right? It has to be subsidized by other payers. So it's, it's a little peculiar that, that Medicaid would be concerned about this, because if you're-- let's say we're, we're imagining that we're all just financially driven. Let's say you're a hospital that operates that way. The idea that if we eliminated prior authorizations, that somehow there would just be this explosion in procedures done for Medicaid unnecessarily because they would have the flexibility to do so, when, of course, every one of those procedures is a loss financially. It doesn't really make any sense, right? As we talk about our incentives and how our incentives are aligned, I think we should just maintain that kind of consistency. With that, I'll answer any final questions and I appreciate your time and attention.

**SLAMA:** Thank you, Senator Bostar. Are there any questions from the committee? Senator von Gillern.

**von GILLERN:** Not to pick on your favorite opponent who you named shortly ago, Mr. Bell indicated that LB210 was intended to be the beginning of a discussion around gold carding. And if I misquoted that, forgive me. Is that your intention?

**BOSTAR:** Yeah, of course. I, I think this is the beginning of this conversation.

**von GILLERN:** OK.

**BOSTAR:** I think it's going very well.

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**VON GILLERN:** Thank you.

**SLAMA:** Thank you, Senator von Gillern. Any additional questions?  
Seeing none, thank you, Senator Bostar.

**BOSTAR:** Thank you.

**SLAMA:** That will bring to a close our hearing on LB210. We'll now move into the next hearing for Senator Bostar's LB446. That closing seems to have cleared the room.

**BOSTAR:** I promise this one is good too.

**SLAMA:** Consent calendar?

**BOSTAR:** Exactly. Good afternoon, Chair Slama, fellow members of the Banking, Commerce and Insurance Committee. For the record, my name is Eliot Bostar, E-l-i-o-t B-o-s-t-a-r , and I represent Legislative District 29. I'm here today to present LB446, which adopts the Peer-to-Peer Vehicle Sharing Program Act and creates a regulatory framework for the emerging vehicle sharing economy. For those unfamiliar with peer-to-peer vehicle sharing, the concept is similar to Vrbo, or Airbnb, except for vehicles. A technology platform creates a car sharing community through an online application where vehicle owners can connect with travelers who can book cars and use them for a defined period of time. To date, Turo is the only peer-to-peer provider operating in Nebraska. LB446 closely follows, but not precisely follows, the National Council [SIC] of Insurance Legislators, NCOIL, Car Sharing Program Model Act developed at the national level. LB446 provides the initial regulatory framework for this industry in order to provide clarity and consumer protection for those participating in peer-to-peer vehicle sharing. The most important provisions include insurance requirements during a sharing period and who has primary liability to insure that a vehicle is always covered. This ensures that the vehicle owner, the lienholder, and anyone that may be involved in an accident during a sharing period will be protected. In addition, the bill provides for recordkeeping requirements by the program, disclosure requirements by the program to vehicle owners and authorized drivers, responsibility for program-installed equipment, the treatment of vehicles subject to a safety recall, and licensing requirements for program drivers. The peer-to-peer vehicle sharing industry is relatively new in its development, and I believe that LB446 represents a good first step in ensuring that we allow this industry to operate in a safe and

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effective manner while ensuring all participants are protected. There will be representatives from the insurance and peer-to-peer industry testifying after me to answer detailed questions. And before I depart, the amendment, the amendment is distributed and it addresses primarily concerns from the banking industry. So with the amendment, there are some who then move from maybe neutral or potentially opposed to supporting the bill. However, with the amendment, as you will see, there are those who move from supporting the bill to maybe neutral or opposed. So it's a little bit of a predicament. With that, I'd be happy to answer any preliminary questions, although-- well, thank you.

**SLAMA:** Thank you, Senator Bostar. I cannot wait to see where this hearing takes us. Any questions from the committee?

**JACOBSON:** I'm just, I'm just--

**SLAMA:** Senator Jacobson.

**JACOBSON:** --I'm just curious, where do you think the bankers are going to come down on this, you got to handicap this?

**BOSTAR:** With the amendment?

**JACOBSON:** Yes.

**BOSTAR:** They-- they're in favor.

**JACOBSON:** OK, good. Now I feel better.

**SLAMA:** Thank you, Senator Jacobson. Additional questions from the committee? Will you stick around for close?

**BOSTAR:** Where else would I go?

**SLAMA:** Fair enough. Thank you, Senator Bostar. With that, we'll open proponent testimony on LB446. And if you're going to be a proponent, please don't be shy, come up to the front row and we'll all be able to go home just a little bit sooner. Good afternoon.

**KYNDELL GAGLIO:** Good afternoon, Madam Chair, honorable committee members, and thank you to Senator Bostar for your leadership on this bill. My name is Kyndell Gaglio, spelled K-y-n-d-e-l-l G-a-g-l-i-o, and I am part of the team at Turo. For those of you unfamiliar with Turo, we are a peer-to-peer car sharing marketplace with a mission of putting the world's 1.5 billion cars to better use. We would like to

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urge your support today of LB446. So again, for those who might not be as familiar with Turo, we own no vehicles. We are an online tool connecting car owners to their neighbors and visitors seeking affordable and convenient transit. This generates an economic opportunity for Nebraskans to earn extra income for day-to-day household expenses, particularly in times like right now where we're seeing a steep increase in the cost of vehicle ownership. It also allows those in need of vehicle flexible access to different sizes and classes of cars to meet those specific needs. It reduces the overall number of vehicles on the road and reduces the accompanying traffic congestion and environmental impacts that come with that. As you heard Senator Bostar say, this bill before you today was inspired by the peer-to-peer car sharing regulatory framework that was approved by the National Council [SIC] of Insurance Legislators. That framework is worth noting is supported by both advocacy groups for the insurance industry, APCIA and NAMIC. Extensive stakeholder participation went into crafting that framework. So along with both those trade organizations, various other stakeholders have signed on in support of the model, including individual insurance companies and several peer-to-peer car sharing marketplaces. The model was introduced just a couple of years ago, but in that small amount of time, over 20 states have adopted some form of this model. You heard from Senator Bostar what the bill includes so I won't go into those details, but basically, for all the reasons he mentioned, we do urge your support of this bill. Approving this framework will encourage shared mobility and economic opportunity for Nebraskans while putting fair regulations in place for car sharing marketplaces that are operating in the state.

**SLAMA:** Thank you, Ms. Gaglio. Are there any questions from the committee? Senator Kauth.

**KAUTH:** Thank you, Chair Slama. How many cars or how many people are signed up to use this in Nebraska today? Is it active?

**KYNDELL GAGLIO:** It is active today. As we've seen in other states, it predominantly starts in sort of urban centers. You're going to see a lot of postings that are in Lincoln and Omaha but we expect that as awareness of the model grows, that even in those rural areas will pick it up and it can really fill that transit gap. Last time we pulled the data, there were tens of thousands of Nebraskans that were using our, our app, either at home or when they travel.

**KAUTH:** Thank you.

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**KYNDELL GAGLIO:** Um-hum.

**SLAMA:** Thank you, Senator Kauth. Senator Ballard.

**BALLARD:** Thank you, Chair. Thank you, Chairwoman.

**SLAMA:** Chair, whatever.

**BOSTAR:** So-- Chair-- so who does the burden fall on if the, the, the renter is either uninsured or underinsured?

**KYNDELL GAGLIO:** Sure. That's what's so important about this regulatory framework. Insurance is confusing. Hats off to everyone on this committee. Insurance is complicated and you are the experts. But for most of us laypeople that are using transit, we are not. And so what this model does call out and what this act will put in place is basically requiring platforms that are operating in the state to fill that void. So on the off chance that there is a lapse in coverage, if someone crosses a state line and insurance minimums are higher where that happens, then it would be the platform that steps in and accepts that liability.

**BALLARD:** OK. And if I-- one more question.

**SLAMA:** No.

**BALLARD:** OK. Thank you. [LAUGHTER] So hypothetically, if, if one rents a car and is driving through Arkansas and hits a pole and then they come back and the renter-- I'm not saying this happened to me, but saying they rent through a peer-to-peer, peer-to-peer site and hits a pole and takes it back to the, the owner of the car and if I refuse to pay, what-- how does that, how does that resolve?

**KYNDELL GAGLIO:** My understanding of this framework is that the platform does step in so that the owner of the vehicle does have coverage. So there's-- they have their own personal coverage when they're joining, plus we require for our model and, again, we're just one model of a few that could come and operate here that you are required then to also have additional coverage and then we also step in and provide that liability. We also, I want to be clear, we have insurance experts that are happy to walk you through any type of you're in Arkansas, you're listening to this on the radio station, you're traveling northbound at a specific speed, they will answer any nuanced questions you have of specificities because, like I said, insurance is complex. But the gist of the framework is that the car

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owner really is covered through their own insurance, through their coverage plan, and through the platform.

**BALLARD:** OK. Thank you.

**KYNDELL GAGLIO:** Um-hum.

**SLAMA:** Thank you, Senator Ballard. Senator Jacobson.

**JACOBSON:** Well, I, I need to follow up a little bit on that. I guess I've got a couple of questions. First of all, how do you document who is at fault? In other words, somebody takes, you know, Senator Ballard's vehicle that's in pristine shape and but there's this dent on the door that he didn't tell him about, and then they bring it back and, gosh, where did this dent come from? So how do you, how do you deal with that stuff? How do you document that, you know, the vehicle wasn't that way when you left with it?

**KYNDELL GAGLIO:** Sure. It's a great question. It's a valuable question. And that's another thing that this act does, is it puts in requirements for what the platforms have to document. So as far as where the drop-off location is for both the pick up of the car and the drop off, all those nuances, so you can tell who is responsible for the vehicle at what times. As far as the esthetics of the car, for our app specifically, when you borrow a vehicle, both the host and the guest, as we refer to them, go around the vehicle and take actual photo evidence. So we have that from both sides so we can see how it looked when it was picked up and then the same process is repeated at drop off.

**JACOBSON:** Well, then a follow up then, of course, then when they're driving it, you know, is this kind of like a rental car where, you know, they see more air than in some aircraft? But I'm just, I'm just-- I, I think about my vehicles. OK, I drive my vehicles hard and I'm not sure how I could lease mine out somebody and-- or rent it out to them on this app and then they start babying it and my vehicle probably isn't going to run the same again. But, but, but I presume those are some of the issues that are out there in terms of what if they over rev it and do those kinds of things, how, how do you resolve that or is it just that's the risk you take?

**KYNDELL GAGLIO:** Sure. Always a possibility. I'd certainly like to think that you're going to be a little kinder when using someone's personal vehicle. And there is that personal accountability. You're

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meeting the host, you're meeting your neighbor when you do that key exchange and handoff and you know you're going to have to turn it back into them. So hopefully that raises the threshold a little bit of how you treat the vehicle. But I'm sure no one would take care of your vehicle to the great extent that you do.

**JACOBSON:** Gotcha. All right. Thank you.

**SLAMA:** Thank you, Senator Jacobson. Additional questions from the committee? Seeing none, thank you very much.

**KYNDELL GAGLIO:** Thank you, Madam Chair.

**SLAMA:** We'll turn the committee over to Vice Chair Jacobson. I will be right back.

**JACOBSON:** All right.

**SLAMA:** Additional proponent testimony for LB446?

**JACOBSON:** Thank you for that [INAUDIBLE].

**SLAMA:** Absolutely. Seeing none, any opponent testimony for LB446?

**JOHN FOWLES:** Members of the committee, my name is John Fowles. I'm here on behalf of Nebraska Association of Trial Lawyers [SIC] to oppose this legislation, Your Honor, and I, I guess I would point out at the outset that while we oppose the legislation, we do believe that the problems that we see with the legislation are potentially solvable. And so I wouldn't foreclose the possibility that we could be comfortable with the legislation. I just think there's some problems with it at the outset. First of all, before the state sanctions this sort of peer-to-peer networking system, they need to make sure that the residents of this state are--

**JACOBSON:** Excuse me, could I get you to spell your name?

**JOHN FOWLES:** Oh, F-o-w-l-e-s.

**JACOBSON:** And J-o-h-n?

**JOHN FOWLES:** J-o-h-n. Yes.

**JACOBSON:** Thank you.

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**JOHN FOWLES:** Before the state sanctions this sort of peer-to-peer networking system, it needs to make sure that it protects the residents of this state from the potential adverse consequences of this system. And the primary problem with this legislation is it incorporates Nebraska's minimum liability limits. You know, obviously, the minimum liability limits have been something and that is advocated, are too low for years, and that's a discussion for another day. But I think, at the outset, this committee has to recognize that there are certain hazards potentially associated with this networking system that might not be present in traditional vehicle ownership or traditional rental vehicle ownership. And I think I would point out at the outset that the, the advocates of this legislation, the corporations that put this legislation together, seem to recognize that, because I would note that in Section 2 of this legislation, they affirmatively protect themselves, protect themselves, but not the residents of the state from fraudulent misrepresentations, intentional representations of the owners of the vehicles. And also at Section 10 of this legislation, they protect themselves from vicarious liability for the operators of these vehicles. Now I'll discuss those provisions a little bit later more specifically, but I think you just have to recognize that this is kind of a new system. We don't know all the hazards associated with it, but I submit to you that they are greater than the normal vehicle ownership. And for that reason, we think the minimum limits need to be higher for vehicles that are part of this system. Now what that number is, you know, in a Uber situation, I think, it's \$1 million. But that's what we do believe, most importantly, is they need to be higher than the minimum limits. Now I would also point out, Your Honors, that there are other problems with this legislation and, namely, what I just mentioned to you a few seconds ago that this legislation protects the corporation from fraudulent and intentional misrepresentations of owners and I think this maybe has something to do with potential theft of the vehicle or the, the owner and the driver or the user conspiring to steal the vehicle. I don't know how that really comes up, but, but that legislation, if that situation were to occur, it would totally negate the insurance coverage that's applicable to the vehicle. Now-- so I guess, again, we think there are problems with the legislation. It mainly primarily goes to the limits that are available, but I think those are potentially solvable and I think our-- we'd be happy to discuss potential remedies if anyone [INAUDIBLE].

**JACOBSON:** I think there will be some questions probably to follow up so thank you and--

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**JOHN FOWLES:** OK.

**JACOBSON:** --I'll ask for committee questions. Yes, Senator von Gillern.

**von GILLERN:** Yeah. Thank you. Couple of questions, Mr. Fowles. First of all, the, the corporations in question, you're concerned about the liability protection that's being offered to them. They-- my understanding, and I've, and I've used Turo before, and just in full disclosure, I just came from testifying on an app or on a bill that is around rideshare services like Uber. So those services do nothing but connect a provider to a user but, yet, you're concerned about liability protections for the actions of those two parties when really all they're doing is making a connection. Am I missing something here?

**JOHN FOWLES:** Well, I think you are, sir. I always want to call you, Your Honor, but in the situation [INAUDIBLE].

**von GILLERN:** No, Brad is fine.

**JOHN FOWLES:** Yeah. I, I, I, I think you are missing something because much of this legislation relates to insurance. I mean, I, I-- there was discussion that it was negotiated by an insurance lobbyist of some sort. So I, I think-- my under-- I mean, when you have a vehicle and you, you-- a personal vehicle and you put that vehicle in [INAUDIBLE], you want to deliver pizzas with your vehicle, your regular insurance is not getting cover you. OK. And I think that's the situation here. The insurance companies don't want to insure these vehicles. Your own insurance doesn't want to insure this vehicle once you do that. So someone has to insure it, and my understanding from the legislation is that, that the peer-to-peer network provides some sort of insurance and that insurance they provide we're telling you that that's inadequate. Not necessarily its not good coverage but-- or the money is not there, but that it's inadequate in terms of the limits because I just, I think, that these vehicles that are going to be in these short-term rentals are potentially-- I don't know-- I mean, I'm not saying all drivers, I'm not trying to disparage everyone, but I think, they're, they're more susceptible to probably bad actors, I think, and so we believe a higher level of protection is warranted than the minimum limits.

**von GILLERN:** So it leaves my second question then, and that is if, if, if-- what is the higher limit that you would propose and have you, have you approached the proponents of this bill with that number?

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**JOHN FOWLES:** I don't know that that's been done yet and that was one of the things we wanted to let them know that we're, we're open to discussing that. I would probably-- there's a-- other people than myself when they would need to put that number to you but at substantially higher, I mean, like I said, I think Uber, as I discussed earlier, is \$1 million and maybe that's too high, but certainly it needs to be a lot higher than \$25,000.

**von GILLERN:** OK. Thank you.

**JACOBSON:** Senator von-- Dungan.

**KAUTH:** Vongan.

**DUNGAN:** Thank you, Senator Jacobson. And as a fellow attorney, I tend to say Your Honor a lot, too, so, so, I, I understand the, the impulse. So I just want to be clear, too, and I guess maybe these questions are following up on Senator von Gillern's. Were you here earlier for the discussion about the insurance for TNCs and why it's set at a million?

**JOHN FOWLES:** Yes.

**DUNGAN:** And there was that discussion that we had where we had talked about the reasoning behind that. At least one of the arguments is that they're a commercial company essentially taking on the, the care of other individuals and things like that. Correct?

**JOHN FOWLES:** Yes. Yes.

**DUNGAN:** And so Senator von Gillern's point, I think if I-- don't want to put words in your mouth, is that what we're talking about here is, is individuals who are using this for their own recreational purposes or maybe getting from point A to point B if they don't have their own vehicle, but they're not necessarily doing their-- serving a commercial purpose the same way as a TNC. Is that fair to say?

**JOHN FOWLES:** True.

**DUNGAN:** And I know you talked about delivering pizzas or things like that and nothing that we're talking about here limits or prohibits, I suppose, people from Turo, for example, utilizing that vehicle for a certain purpose. But the intent behind it, it seems, is just to use it for personal, recreational, or transportation use, not a commercial purpose.

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**JOHN FOWLES:** Yes.

**DUNGAN:** And it seems to me that that's the difference maybe between this legislation that adopts the standard that currently exists for personal use and having a higher standard for commercial vehicles. Is that maybe why that differentiation exists?

**JOHN FOWLES:** Well, true, true, but I guess-- I think, I think the concern that we would have, NATA would have, NATA members would have is do they really know who is driving the vehicle? I mean, are there, are there, are there inherent problems with this system that make it more dangerous? And, and that's where maybe it's different than the, the situation that you've, you've described.

**DUNGAN:** And, and I, I completely understand the concerns. I just want to-- it seems to me that what we're talking about here with LB446 is just maybe separate and apart from the discussion of whether those personal liabilities are what they should be and we can differ or agree about that. But this just adopts what the current standard is for those individuals.

**JOHN FOWLES:** Well, that is true. That is true.

**DUNGAN:** OK. I just wanted to make sure that was clear.

**JOHN FOWLES:** Yeah.

**DUNGAN:** Thank, thank you. I appreciate it.

**JACOBSON:** Senator Kauth.

**KAUTH:** Thank you, Vice Chair Jacobson. So I, I guess, Senator Dungan's clarification there is what I was going for. This is, this is much different than the TNC proposal. And I guess my question is, why are the trial attorneys getting involved with this? It, it seems like I've heard a lot about trial attorneys want those limits raised a lot today. So I'm wondering, I mean,--

**JOHN FOWLES:** Well--

**KAUTH:** --do you guys get brought in when somebody is suing?

**JOHN FOWLES:** Well, yes, certainly, certainly. If, if, if someone rents one of these vehicles on a short-term rental and maybe they're not a very experienced driver, but they got a driver's license, but maybe

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they can't get their own insurance and that's why they don't-- or they can't afford their own car or what, what have you, and then they're operating one of these vehicles and they run into someone and that person incurs \$1 million in med-- or \$100,000 in medical bills. We have to tell them, well, the limits are \$25,000. And that's a difficult discussion to have with people who've been injured. And, and I guess myself personally, and I think I speak for NATA, too, that this just seems like a system that is where we are going to run into that situation and then potentially probably a higher limit should be applicable to this system. And, again, it is that we keep saying, well, it's for personal use and not, not a-- similar-- different from Uber, but at the, at the end of the day that the network is making money certainly from this, from this system. And, and so for that reason we just think that higher limits are, are warranted.

**KAUTH:** So isn't this more like Airbnb for cars? I mean, yes, network makes a little bit but it's really a discussion between two individual parties.

**JOHN FOWLES:** Yes, and, and, and I-- that's kind of what-- as I sitting back thinking about this that was kind of the situation that occurred to me and read about, about Airbnbs being abused by, by people who rent those. And I, I guess that's what I would be concerned about the vehicles, too, is that you run into the same situations. Very, very short-term ownership, they don't have a lot invested in it, but what are they going to do with that car and who is going to get hurt?

**KAUTH:** OK. Thank you.

**JOHN FOWLES:** Yes.

**SLAMA:** Thank you, Senator Kauth. Additional committee questions?

**JACOBSON:** I would have one.

**SLAMA:** Senator Jacobson.

**JACOBSON:** I guess, again, following up on this question. I'm, I'm, I'm, I'm baffled by why this is a concern. You talked about uninsured motorist but we're really talking about I rent my vehicle to someone else and they take off and drive it. I'm, I'm out of the equation. You know, the-- I guess I'm more interested in knowing-- I can tell you from a banker standpoint, that troubles me a little bit about somebody who I'm financing a car for that they're going to loan to somebody else. But then we may be having our own requirements for on that

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individual if they're going to be doing that as to what those coverages need to be from a, from a collision and from in the event that there is a wreck or it's stolen or something that way. But that seems to me that's a different discussion than uninsured motorists. And so I'm just curious why you see an uninsured motorist risk here that's different than any other vehicle out there being driven?

**JOHN FOWLES:** I'm more, I, I think NATA would be more concerned about the liability insurance coverage on the vehicle. We believe that should be higher. I mean, underinsured should potentially be higher, too, but I think we're more concerned about the liability coverage that person is driving around with.

**JACOBSON:** So if I rent my vehicle, you're thinking that I need my liability insurance higher?

**JOHN FOWLES:** Yes.

**JACOBSON:** But wouldn't the person driving the vehicle-- I mean, I realize I'm going to have a certain liability level. And as the owner of the vehicle, I've got some liability, as would the person driving it. I don't know what the requirements are under this app for having it, the person renting and showing proof of insurance.

**JOHN FOWLES:** I don't believe they have any insurance. I mean, the way I-- the way I read this, this legislation-- hopefully-- someone will correct me if I'm wrong I'm sure, is that, that the, the network provides the insurance because the minute you lease out your car to someone, you rent your car out to someone else from this network, your insurance is gone. Your insurance has disappeared because it's being thought that you're insurance is going to cover that.

**JACOBSON:** Well, my liability--

**JOHN FOWLES:** Yeah. Yeah.

**JACOBSON:** --insurance should be-- still be in place.

**JOHN FOWLES:** I, I don't think it is the way I read the legis-- may-- maybe I'm wrong, but I don't think it is.

**JACOBSON:** Well, I guess I'm trying to figure out if I rent my vehicle, I rent my vehicle out to someone and that vehicle's in charge-- or involved in an accident and they're going to sue the owner of the

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vehicle, I got to believe that my umbrella policy and my liability policy would come into force.

**JOHN FOWLES:** Again, again, I think that's more of a question for your individual policy. But I, I kind of keep going back to the pizza delivery guy when, when, when you-- if I had my car certified, whatever, if I started delivering pizzas for Domino's, my insurance isn't going to cover me anymore. And--

**JACOBSON:** But I don't, I don't know that that's what we're talking about here. We're talking about renting our car to someone else to use for personal use.

**JOHN FOWLES:** I know, someone's got to explain. The way I understand the insurance is it is provided by the network and we're saying it's inadequate because the limits are too low. And I think that's--

**JACOBSON:** I, I think I'll look forward to a close on this--

**JOHN FOWLES:** Yeah.

**JACOBSON:** --to kind of get some of that cleared up. So thank you.

**JOHN FOWLES:** Yeah.

**SLAMA:** Thank you, Senator Jacobson. Additional questions from the committee? Seeing none, thank you very much.

**JOHN FOWLES:** OK. Thank you.

**SLAMA:** Additional opponent testimony for LB446? Seeing none, anybody wishing to testify in the neutral capacity on LB446? Good afternoon, Mr. McIntosh.

**RYAN McINTOSH:** Good afternoon, Chairperson Slama and members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as registered lobbyist on behalf of the Nebraska Bankers Association in a neutral capacity. First, I want to thank Senator Bostar for his consideration of our concerns and willingness to work with this issue over the last few years. AM367 contains all the changes to LB446 requested by the NBA on behalf of our members and we urge the committee to adopt LB346-- or 36-- 367 [SIC--LB446]. When a consumer borrows money from a financial institution in order to purchase a vehicle the consumer is typically required to maintain insurance on that vehicle, which serves as collateral for the loan. It

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is important that insurance coverage not lapse as a result of the consumer using their vehicle for peer-to-peer sharing program. As introduced, LB446 requires peer-to-peer vehicle sharing programs to assume financial liability on behalf of the vehicle owner for claims of bodily injury or property damage to third parties or uninsured or underinsured motorist losses during that same period. Although the bill requires such programs to, to require the vehicle to be insured, it does not provide for the same protections for the vehicle owner as it does for third-party liability. AM367 corrects that and inserts new Section 5 that ensures proper coverage is in place by the driver or the owner of the vehicle and also allows the peer-to-peer vehicle sharing program to enter into a contract with the vehicle owners to contractually assume some or all of the vehicle owner's risk of loss or physical damage to the owner's vehicle. It also allows for peer-to-peer vehicle sharing programs to enter into a contract with the drivers participating in the program for the program to contractually assume some or all of the driver's liability for physical damage to the owner's vehicle. So my understanding of this is when you enter into the agreement, you can click the box that you want the additional coverage for both the owner of the vehicle and the driver. And with that, we would urge the committee to adopt all LB367 [SIC--LB446]. Overall, as a matter of policy, we don't have an interest in whether the state has a peer-to-peer sharing program but AM367 does take care of all of our concerns.

**SLAMA:** Thank you, Mr. McIntosh. Any questions from the committee? Seeing none, thank you very much.

**RYAN McINTOSH:** Thank you.

**SLAMA:** Additional neutral testimony on LB446? Good afternoon.

**BRAD NAIL:** Hello again. Thank you, Madam Chair, members of the committee. I'm Brad Nail, B-r-a-d N-a-i-l with Converge Public Strategies here on behalf of Enterprise Holdings. We operate Enterprise Rent-A-Car, Alamo Car Rental, and National Car Rental. We're pleased to support the efforts of Senator Bostar to establish a framework for peer-to-peer car sharing insurance in line with the NCOIL model. To that end, we have a few suggestions to bring the bill more fully in line with the model but most of those suggested revisions are technical in nature. They don't impact the intent or the substance of the bill as filed. That's what's circulating to you right now. And I'd be happy to answer questions on, on the specifics of those. We do, however, oppose the amendment. Understanding that we

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support the underlying bill and, and oppose the amendment, I'd like to spend my time discussing the amendment. The amendment is not part of the agreed model language and should not be adopted. It purports to address circumstances where a shared vehicle is subject to a lien, but that circumstance is addressed properly with model language in Sections 5 and 9 of the bill. Model language around lienholder protections are already included. What the amendment does is to permit a P2P vehicle sharing program to sell insurance to a vehicle owner and a vehicle driver without that insurance being subject to any regulation by any department of insurance. Specifically, subsections (3) (a) and (3) (b) describe scenarios where sharing program accepts the transfer of risk for damage to the shared vehicle in exchange for compensation, which is the very definition of an insurance transaction. But those subsections go on to read: Such contractual assumption shall not be deemed to be physical damage insurance or the transaction of the business of insurance in this state. In this P2P sharing program scenario a failure on the part-- well, a sharing program will be collecting fees to use to repair property belonging to someone else. Any failure on their part to properly account for that risk would result in the other party being damaged and unable to pay for the repairs, which is why this is necessarily a regulated product. Further, the amendment permits the sharing program to sell this separately to both the vehicle owner and the vehicle driver. In the case of the vehicle driver, the sharing program is accepting the transfer of liability under both contractual and common law for damages that the driver could owe to the vehicle owner. There is no way to conclude that is anything other than the sale of insurance. So again, situations concerning physical damage to the rental contract-- to the rented vehicle were contemplated in the model bill process. They're addressed in the bill already. This amendment is not part of the agreed insurance model. It creates the potential for substantial harm to the public and should be struck-- should not be adopted. Again, we support the underlying bill. We just don't think the amendment is a good idea and happy to conclude there.

**SLAMA:** Thank you very much. Any questions from the committee? Senator Ballard.

**BALLARD:** Thank you, Chair Slama. How many other states have passed similar legislation to this?

**BRAD NAIL:** There are about 20 states that have passed peer-to-peer frameworks. None have included that language in the amendment.

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**BALLARD:** None have included that.

**BRAD NAIL:** Zero.

**BALLARD:** OK. Thank you.

**BRAD NAIL:** It's-- if I may?

**BALLARD:** Yes.

**BRAD NAIL:** It's been proposed in one other state, only here in one other state, and it has not been adopted anywhere.

**BALLARD:** OK. Thank you.

**SLAMA:** Thank you, Senator Ballard. Additional questions from the committee? Seeing none, thank you very much. Additional neutral testimony on LB446? All right. Seeing none, Senator Bostar, you're welcome to close. For the record, there is one proponent letter for LB446. Not quite sure where they are on the amendment, but we'll circle back with them. Senator Bostar.

**BOSTAR:** Thank you, Chair Slama and members of the committee. As I said, the amendment is a real pickle. So again, just sort of going through some of what, you know, came out of the testimony in the hearing. So the trial attorneys would like to see the minimums set higher. I think there's, there's a few things that I'll bring up regarding that. I think there are valid reasons why state liability minimums should be higher. There are. However, that's not what this bill is about. The reality is that the Nebraska Association of Trial Attorneys wants the liability protection minimums to be higher regardless of it's this bill or any other bill, they want be higher in general. The reason it is what it is in this legislation is because we are essentially maintaining the standards that exist in the state in general. They see that as too low in general so, therefore, it's being expressed that it is too low on this bill. I don't imagine that there's any legislation that would even come close to touching liability minimums, that if they were maintained at the state standard now that that organization wouldn't come in and oppose to say that they should be higher. So I, I think that that's, that's-- hopefully that gives some context. I don't think this is about this bill. I think it's about every bill. Also sort of related to that, Turo is the only operator in the state on this. If you wanted to put your vehicle on the Turo application, you would have to have your own insurance and you would have to choose a, a-- an additional insurance plan from

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Turo, from the app, to go on top of it. Every single one of those options-- this is for information purposes-- comes with, at minimum, a \$750,000 liability provision. And that would be in addition to whatever you also had. Now, granted, that's Turo, right? That's their business model. That's what they're doing. That's not-- we're not requiring that in law here to say, you know, if you're, if you're an organization that wants to offer this service you have to then force them-- force your, your buyers to also purchase additional insurance. However, the only entity that currently is offering the service does that so I just wanted to throw that out there. The other piece of this is it's-- this isn't perfect. There are, there are details to work out and, and we're going to continue to work them out. We're going to continue to figure out what the right path forward is to get this done. But what I want to stress to the committee is this legislation doesn't allow this business to start. It's already started. It's, it's happening now. You can put your car up today. You can go rent one tomorrow. It's happening now and it's a little bit of the Wild West. It would be good if it wasn't. It would be good if there were some protections available that, that folks who are participating in this on, on all sides of this business model, putting your car up, renting a car, that there was confidence in the protections under our statutes. And right now there isn't that confidence. No one should-- I wouldn't feel confident in whether or not I was protected participating in this. And that's why this is important, because we need to establish this framework. We can't just keep waiting for it to for maybe for everyone to agree perfectly because right now Nebraskans are at risk and nothing is going to stop that until we protect them. With that, I'll answer any final questions.

**SLAMA:** Thank you, Senator Bostar. Any questions from the committee? Seeing--

**JACOBSON:** No, no question.

**SLAMA:** Thank you very much.

**BOSTAR:** Thank you.

**SLAMA:** Thank you, Senator Bostar. That brings to a close our hearing on LB446 and our hearings for--